IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MARION GRANTHAM AND
BARBARA GRANTHAM **PLAINTIFFS**

VS. **CIVIL ACTION NO. 4:22-cv-00148-MPM-JMV**

CITY OF GREENWOOD, MISSISSIPPI, ET AL. **DEFENDANTS**

MUNICIPAL DEFENDANTS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

Barbara and Marion Grantham sued the City of Greenwood, Mayor Carolyn McAdams, and Community Development Director Betty Stigler after they received a $25 parking ticket and were made to comply with a City ordinance prohibiting sidewalk displays of merchandise. The Granthams claim these actions were taken in retaliation for their criticism of the new police chief, but this case should begin and end with a few admissions: (1) Barbara Grantham never engaged in speech at all; (2) neither of the Granthams have any evidence that the Mayor or Betty Stigler even knew of Marion Granthams' comments about Jody Bradley's appointment; and (3) the actions the City took have not kept them from speaking or selling their pottery. Summary judgment on all claims is warranted.

I. BACKGROUND

Delta Boutique and Gifts. Marion and Barbara Grantham are husband and wife. See Doc. No. 2. Barbara owns Delta Boutique and Gifts as a sole proprietor. *See* Barbara Grantham Depo. Tr. at pp.10-11, Ex. A. Delta Boutique was first opened under the name Beach Bums on Park Avenue in Greenwood in 2001, but, around 2017, moved downtown, changing its name in the process to better fit the historic nature of the downtown area. *Id.* at pp.11-12. Marion sometimes does odd jobs around the store but is not an employee. *Id.* at pp.12-13.

Delta Boutique is now located at the corner of Howard Street and Park Avenue. *Id.* at p.11. At this corner, there is a handicap ramp right across from the front door, a crosswalk at that intersection, a fire hydrant to the right of the front door, and a utility pole and a no parking zone to the left. *See* Google Map pictures, Ex. B; Marion Grantham Depo. Tr. at pp.36-38, Ex. C. The Granthams would regularly park in the no parking zone over the years. Marion Grantham Depo. Tr. at p.65, Ex. C.

From the time it moved downtown until March 22, 2021, the Granthams admit that Delta Boutique operated without any interference from the City. *See* Doc. No. 2; Barbara Grantham Depo. Tr. at p.16, Ex. A.

Jody Bradley's Appointment and Marion Grantham's "Speech." In December 2019, the City Council appointed Jody Bradley as police chief. Doc. No. 2. Because Marion did not believe Jody Bradley was qualified for the chief position, he began commenting on unknown person's social media posts, proclaiming that Jody Bradley did not have the authority to conduct stops. Marion Grantham Depo. Tr. at pp.24-26, Ex. C. None of these comments were produced, and Marion could not identify any specific post with this alleged "speech," though he says that it was "all on social media back then." *Id.* They have no knowledge of who saw these posts. *Id.* at p.30.

In December 2020, Jody Bradley was terminated as chief and moved to a newly-created position in the police department. Doc. No. 2. According to Marion, Bradley remained chief for a couple of days after the one-year mark expired for Bradley to become certified. Marion Grantham Depo. Tr. at pp.27-30, Ex. C. As a result, Marion called a friend in the Attorney General's office and asked about the time limit within which a police officer is required to be certified. *Id.* He did not speak with anyone else about the actions taken regarding Jody Bradley's employment in December 2020. *Id.* at p.28.

Mexican Pottery, Parking, and Ordinance Enforcement. In February 2021, Delta Boutique started selling Mexican pottery, which consists of pottery chimineas and vases as well as metal yard art. Doc. No. 2; Pottery Pictures, Ex. D.[1] To sell it, Marion and Barbara would sometimes arrange it on the sidewalk outside of Delta Boutique. Pottery Pictures, Ex. D; Marion Grantham Depo. Tr. at pp.41-42, Ex. C. Some days the pottery stayed in Marion's trailer, and he did not sell it at all. Marion Grantham Depo. Tr. at p.42, Ex. C.

Greenwood has an ordinance that prohibits those doing business within the City from "expos[ing] goods, wares, or merchandise in such a manner as to rest upon, or project over the sidewalks of the city or in any manner obstruct the free use of said sidewalks and passage thereon by the public." Greenwood Ordinance Sec. 30-131, Ex. E. Greenwood also has parking ordinances prohibiting parking "within 15 feet of a fire hydrant, unless otherwise designated by marks or signs," "within 20 feet of a crosswalk at an intersection, unless otherwise designated by marks or signs," and "at any place where official signs prohibit stopping." Greenwood Ordinance Sec. 34-235, Ex. F.

After the Granthams began displaying their pottery on the sidewalk, Mayor Carolyn McAdams began receiving complaints from other business owners. Carolyn McAdams Declaration, Ex. G. Still, she did not direct that the pottery be removed. *Id.* She also received a complaint regarding the Granthams illegal parking from the CEO of Greenwood Utilities because Marion Grantham's vehicle was blocking the utility pole. *Id.* On this one occasion, she did direct Police Chief Terrance Craft to speak with Marion about parking in front of the utility pole, but did not direct Chief Craft or any other police officer to write a parking ticket. *Id.*

On March 22, 2023, Director of Community Development Betty Stigler directed Michael Eubanks, a subordinate, to tell the Granthams that they must remove their pottery from the

[1] The pottery is both bought and sold through the Boutique. Marion Grantham Depo. Tr. at pp.94-95, Ex. C.

sidewalk because it violated the ordinance. Betty Stigler Declaration, Ex. H. As Director of Community Development, it is Stigler's duty to enforce the ordinance prohibiting sidewalk displays. *Id.* Eubanks arrived at Delta Boutique and told Barbara Grantham to remove the pottery from the sidewalk. Barbara Grantham Depo. Tr. at pp.14-15, Ex. A. Marion Grantham was not present. *Id.* at p.22. He was instead a few buildings down at the tattoo parlor that he owns speaking with Chief Craft. Marion Grantham Depo. Tr. at pp.15, 70, Ex. C.

After Eubanks left, Barbara called Marion to let him know what happened. Barbara Grantham Depo. at p. 22, Ex. A. Marion then called Betty Stigler to let her know that he believed he was being discriminated against and hung up on her. Marion Grantham Depo. Tr. at p.20, Ex. C.[2] Marion and Chief Craft began walking towards the boutique when they saw a police officer writing a ticket. *Id.* at pp.20-21, 70. Marion pointed out other vehicles that were parked illegally, and one other one was also written a ticket. Doc. No. 2. Before Marion could even see the ticket, Chief Craft took it. Marion Grantham Depo. Tr. at pp.64, 66, Ex. C.[3] Marion has never paid the ticket and never went to court for the ticket. *Id.* at p.68. The vehicle was admittedly parked illegally. *Id.* at p.65.

Since March 22, 2021, the Granthams have continued to buy and sell Mexican pottery, selling on Facebook and at locations in North Carrollton, Winona, Cleveland, Grenada, from their storage room in Greenwood, and still selling a few pieces inside Delta Boutique. *See* Facebook posts, Ex. I; Marion Grantham Depo. Tr. at pp.97-107, Ex. C.

Lawsuit. The Granthams filed this lawsuit on July 15, 2022 in the Leflore County Circuit Court. Doc. No. 2. Defendants removed it to this Court. Doc. No. 1. During the discovery

[2] In the complaint, he claims that Stigler hung up on him, but he testified to the opposite. *Compare id. with* Doc. No. 2.

[3] The parking ticket was written for Barbara's vehicle but was made out to Marion. *Id.* at pp.64-65.

period, the Granthams elected not to send any written discovery or take any depositions. *See generally* Docket. The discovery period has ended.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is proper where there is no genuine issue as to any material fact, such that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). To avoid summary judgment, a plaintiff must produce evidence of "specific facts showing the existence of a genuine issue for trial." *Foulston Siefkin LLP v. Wells Fargo Bank of Texas N. A.*, 465 F.3d 211, 214 (5th Cir. 2006). A factual issue is "material only if its resolution could affect the outcome of the action." *Burrell v. Dr. Pepper/Seven Up Bottling Group, Inc.*, 482 F.3d 408, 411 (5th Cir. 2007).

"[C]onclusory allegations, speculation, and unsubstantiated assertions are inadequate to satisfy the nonmovant's burden in a motion for summary judgment." *Ramsey v. Henderson*, 286 F.3d 264, 269 (5th Cir. 2002) (quotation omitted). Moreover, "[w]here critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant, or where it is so overwhelming that it mandates judgment in favor of the movant, summary judgment is appropriate." *Custer v. Murphy Oil USA, Inc.*, 503 F.3d 415, 421 (5th Cir. 2007) (internal quotations omitted).

III. ARGUMENT & AUTHORITIES

The Granthams have sued the City of Greenwood, Mayor McAdams in her official and individual capacities, and Betty Stigler in her official and individual capacities. They assert claims on the theories of First Amendment retaliation and Equal Protection selective enforcement as well as a state-law tortious interference claim. Doc. No. 2. All are meritless.

Federal Law

The applicable legal standards are settled. Actions against municipalities and official-capacity defendants are analyzed under a framework that requires plaintiffs to demonstrate both (1) that a violation of the Constitution or federal law occurred and (2) that a governmental policy or custom was the moving force behind the violation. *E.g.*, *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 405 (1997). Alternatively, individual-capacity defendants enjoy the defense of qualified immunity, meaning that plaintiffs must demonstrate both (1) that a violation of the Constitution or federal law occurred and (2) that the individual-capacity defendants' actions were objectively unreasonable under clearly established law. *E.g.*, *Atteberry v. Nocona Gen. Hosp.*, 430 F.3d 245, 252-53 (5th Cir. 2005).

The Granthams' case is deficient in its totality. Most fundamentally, there can be no liability against anyone because the Granthams cannot demonstrate a violation of the Constitution. Moreover, even if the Granthams could make such a showing, there still would be no liability because they cannot establish a "governmental policy or custom" with respect to the city and official-capacity defendants or objectively unreasonable conduct under clearly established law with respect to the individual-capacity defendants.

A. The Granthams' First Amendment claim must be dismissed.

The Granthams' First Amendment claim is not actionable for a simple reason: the Granthams were admittedly parked illegally and clearly in violation of the sidewalk ordinance. Significantly, "retaliatory criminal prosecutions in violation of the First Amendment are actionable only if a plaintiff can also prove the common-law elements of malicious prosecution, including the absence of probable cause to prosecute." *Kennan*, 290 F.3d at 260; *Hill v. Haren*, 2023 WL 3444074, *6 (W.D. Tex. Mar. 20, 2023) ("As the Supreme Court recently clarified, in

the context of a claim of retaliatory arrest or prosecution, the presence of probable cause generally defeats a First Amendment retaliation claim.").

As to the parking ticket, Marion Grantham readily admits the car was parked illegally and, therefore, cannot demonstrate an absence of probable cause. Marion Grantham Depo. Tr. at p. 65, Ex. C. As to the sidewalk ordinance, it prohibits those doing business within the City from "expos[ing] goods, wares, or merchandise in such a manner as to rest upon, or project over the sidewalks of the city or in any manner obstruct the free use of said sidewalks and passage thereon by the public." Greenwood Ordinance Sec. 30-131, Ex. E. The Granthams had their Mexican pottery on display outside of the Boutique both on the day in question and on numerous other days throughout the course of the month. Marion Grantham Depo. Tr. at pp.41-42, Ex. C. Instead of instituting any criminal proceeding, issuing a citation or fine, the Granthams were told they could not display their merchandise on the sidewalk and to move it inside. *Id.* at p.62. If the existence of probable cause that the Granthams were violating the ordinance bars a claim for retaliatory arrest or prosecution, surely it bars a claim where the plaintiff was merely warned without any institution of legal proceedings.

Relatedly, they also cannot demonstrate other elements of malicious prosecution under Mississippi law, including the institution of a proceeding, with malice, by or at the insistence of the defendants. *See McCreary v. City of Gautier*, 89 So. 3d 703, 709 (Miss. App. 2012). The City was well within its rights to require the Granthams to comply with both parking and sidewalk display laws.

But even if the clear violations of law do not bar the claims, they fail on the merits. To prosecute a retaliation claim, outside the employment context, a plaintiff "must show (1) [they] [were] engaged in constitutionally protected activity, (2) the defendants' actions caused [them] to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that

activity, and (3) the defendants' adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct." *See Kennan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002). Both Barbara and Marion's claims fall short under these elements.

Protected Speech. Barbara Grantham's First Amendment retaliation claim is a non-starter because she admitted that she did not engage in speech. Barbara Grantham Depo. Tr. at p. 13, Ex. A; Marion Grantham Depo. Tr. at p.18, Ex. C. Because she admittedly did not "engag[e] in a constitutionally protected activity," Barbara has not proven an essential element of her claim. *E.g.*, *Kennan*, 290 F.3d at 258.

As to Marion, it is wholly unclear what his speech consisted of. While in the complaint he alleged that he "publically criticized" Jody Bradley's appointment as police chief and his subsequent move to a newly-created position within the police department, his testimony is in part contradictory to this assertion. In depositions, he stated that, in 2019, he began telling others that Jody Bradley, the police chief, could not conduct a traffic stop. Marion Grantham Dep. Tr. at p.25, Ex. C. Although he says this was all on social media, he has not produced and could not identify a single social media post. *Id.* at pp.25-26. In 2020, his "speech" included having a personal conversation with a friend who worked in the Attorney General's office asking what the time limit was for a police officer to become certified. *Id.* at pp.28-30.

It is a constitutional mainstay that not all speech is protected by the First Amendment. Rather, the First Amendment protects only certain categories of speech. A plaintiff seeking relief under the First Amendment shoulders the burden of proving that the speech for which he was allegedly retaliated falls in the "protected" category. *See Marinello v. Bushby*, 163 F.3d 1356 n.6 (5th Cir. 1998) (relying on *Libbra v. City of Litchfield, Ill.*, 893 F. Supp. 1370, 1376-79 (C.D. Il. 1995)).

As to the first instance of speech, posting on other people's social media accounts, Marion has failed to identify with any specificity what speech he believes he suffered retaliation for. This alone is fatal to his claim. *See id*.; *see also Beeding v. Hinds Cty. Miss.*, 2012 WL 5027176, *2 (S.D. Miss. 2012) (acknowledging that plaintiffs must "designate specific facts" at the summary judgment stage).

Other courts have highlighted the importance of plaintiffs being able to identify specific protected speech in like circumstances. For example, in *Libbra*, the court considered signs posted by plaintiffs that bore the following inflammatory content: "Does city attorney still visit madam Debbie[;]" "Did city attorney get AIDS Debbie's whorehouse[;]" "Ms. D.A. needs line [of] coke[;]" "Rumor has it Ms. D.A. is a dyke[;]" and "Ms. Mayor and superintendent having an affair[.]" 893 F. Supp. at 1379-84. Having concluded that the plaintiffs had no evidence other than "inconsistent testimony, information from highly suspect and inherently incredible or questionable sources, and a source the [plaintiffs] refused to identify[,]" the district court dismissed the plaintiffs' retaliation claim. *Id*. at 1383. The same concerns are present here.[4]

Adverse Action. Like in the employment arena, plaintiffs alleging retaliation under the First Amendment must demonstrate that a defendant's conduct rises to a certain level of severity. *See Kennan*, 290 F.3d at 258 ("[S]ome retaliatory actions — even if they actually have the effect of chilling the plaintiff's speech — are too trivial or minor to be actionable as a violation of the First Amendment."). The governing inquiry is whether a public official engaged in conduct that "would chill a person of ordinary firmness from continuing to engage in [the] activity" for which he or she was allegedly retaliated. *Id*. This element ""requires some showing that the plaintiff's exercise of free speech has been curtailed." *McLin v. Ard*, 866 F.3d 682, 696 (5th Cir. 2017).

[4] Marion's failure to specifically identify the speech for which he believes he was retaliated is also significant for the third element of a First Amendment claim. It is impossible to determine what motivated the alleged "adverse action" without first knowing what speech he thinks was protected.

Actions with a "chilling effect" are those that are "threatening, coercive, or intimidating so as to intimate that punishment, sanction, or adverse regulatory action will imminently follow." *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686-89 (4th Cir. 2000). The Fifth Circuit has explained that "retaliatory criticisms, investigations, and false accusations that do not lead to some more tangible adverse action are not actionable under § 1983." *Matherne v. Larpenter*, 2000 WL 729066, *3 (5th Cir. 2000). On the other hand, "[s]ignificant adverse actions such as arrests or indictments may constitute actionable First Amendment violations." *Id.*

The actions taken here are more in line with the former than the latter. As to the parking ticket which was admittedly justified, the Granthams never saw it, never paid it, never went to court for it, and have not suffered any adverse effects from it. Marion Grantham Depo. Tr. at p.68, Ex. C. According to the Granthams, Chief Craft took the ticket, and they have never had any other interactions regarding that ticket. *Id.* at pp. 64, 66, 68. But, even if forced to pay the $25.00 parking ticket, *see* Parking ticket, Ex. J, that is not the kind of harm that would chill a person of ordinary firmness from speaking. It falls under the "threshold of harm" for a First Amendment retaliation claim. *Matherne*, 2000 WL 729066 at *3; *Kennan*, 290 F.3d at 258 ("trivial" or "minor" harms are not actionable).

The same is true of the enforcement of the ordinance. As already explained, the Granthams violated the ordinance on multiple occasions over the course of a month. Barbara Grantham Depo. Tr. at p.30, Ex. A; Marion Grantham Depo. Tr. at pp.41-42, Ex. C. Still, they were not written a citation or fined. Marion Grantham Depo. Tr. at p.62, Ex. C. They were simply told that they were not allowed to display the merchandise on the sidewalks and to move it. *Id.* They have been allowed to continue selling the Mexican pottery within the store, and they have sold the Mexican pottery at other locations within and outside of the City. *See id.* at pp.97-

107; Facebook posts, Ex. I. At best, this is the kind of "minor" or "trivial" harm which is not actionable under the First Amendment.

The Granthams' claim also fails the adverse action standard because they have not shown that their speech has actually been curtailed. *McLin*, 866 F.3d at 696-97 (dismissing First Amendment retaliation claim due to lack of actual curtailment). Indeed, a reading of the complaint shows that there is no allegation that their speech has been curtailed. *See* Doc. No. 2; *McLin* 866 F.3d at 696-97. And the Granthams readily admit that nothing the defendants have done have stopped him from criticizing them. Barbara Grantham Depo. Tr. at p.28, Ex. A; Marion Grantham Depo. Tr. at p.87, Ex. C. Although Marion says he has not posted on social media, he continues to have conversations with other people regarding the mayor. Marion Grantham Depo. Tr. at p.87, Ex. C. Barbara stated that she "does not care for the mayor and doesn't care who knows it." Barbara Grantham Depo. Tr. at p.28, Ex. A. This continued behavior proves fatal, for "a retaliation claim requires some showing that the plaintiff's exercise of free speech has been curtailed." *Kennan*, 290 F.3d at 259; *Lousteau v. City of Canton, Miss.*, 2013 WL 5755243, *6 (S.D. Miss. 2013) ("That Lousteau may have become more careful before he proceeds is not enough to show that his speech was actually curtailed when he ultimately states that Defendants' actions would not keep him from speaking.").

Causation. Even if the Granthams could show that they engaged in protected speech and suffered an adverse action, to succeed on a First Amendment retaliation claim, the Granthams must also show that the defendants' adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct." *See Kennan*, 290 F.3d at 258. To do so, the Granthams must show that the retaliatory motive was the but-for cause of the injury, or, put a different way, that the "adverse action against the plaintiff would not have been taken absent the retaliatory motive." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722 (2019). This element is

lacking for numerous reasons, including that the officials with the claimed retaliatory motive lacked knowledge of the alleged protected speech, there is no evidence that they caused the alleged harm, and there is evidence that the alleged harm would have occurred absent the alleged retaliatory motive.

First, it is unclear who the Granthams believed possessed the retaliatory animus causing the adverse action. Although they sued both Mayor McAdams and Betty Stigler, it seems they only claim that Mayor McAdams possessed the retaliatory animus and Betty Stigler simply did Mayor McAdams' bidding. *See* Barbara Grantham Depo. Tr. at pp.13-14, Ex. A; Marion Grantham Depo. Tr. at pp.18-19, 20-21, 30-32, Ex. C.[5] But Betty Stigler cannot be held liable for Mayor McAdams' alleged animus. *See Stout v. Vincent*, 717 F. App'x 468, 472 (5th Cir. 2018) ("[d]iscriminatory intent of one official may [not] be imputed to another for purposes of imposing individual liability under the civil rights laws." (quoting *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 534 (5th Cir. 1997)).

In any event, the Granthams have no evidence that Mayor McAdams or Betty Stigler knew about Marion's speech. Without knowledge of the alleged protected activity, there can be no liability. *See Moss v. Alcorn Cty., Miss.*, 2015 WL 419655, *4 (N.D. Miss. 2015) ("Because Moss has failed to show that any decisionmaker had knowledge of his alleged protected activity and thus has not established that such activity motivated his termination, the Court finds that Moss has not met this initial burden[.]"); *Beattie v. Madison Cty. Sch. Dist.*, 254 F.3d 595, 604

[5] Marion Grantham's testimony on this point is confusing. At one point, he seems to claim that Stigler was retaliating against him for hanging up on her. *Id.* But he hung up on her after he was told to move the pottery, so, even if hanging up on someone was "protected speech," it could not be the motivating factor in the City's enforcement of the sidewalk ordinance. At another point, he seems to claim that Stigler had animus against him for an event that occurred seven years ago, but his lawsuit claims that he was retaliated against based on comments made about Jody Bradley's appointment in December 2019. Doc. No. 2. He cannot change his factual theory now. *See Singh v. City of Canton*, No. 3:19-cv-00518-CWR-LRA, Doc. No. 50 at p.7 (S.D. Miss. Dec. 1, 2020) ("A claim or new factual theory 'which is not raised in the complaint but, rather, is raised only in response to a motion for summary judgment is not properly before the court.'") (collecting cases).

(5th Cir. 2001) ("Without a showing that the board had actual knowledge of the alleged improper basis of Jones's and Acton's recommendation, the board cannot be liable for the alleged retaliation."). Marion admitted that he did not speak to the mayor directly, did not speak out at a Board meeting, has no knowledge of who saw the unspecified and unproduced social media posts, and has no knowledge whether the Mayor knew of his conversation with his friend at the Attorney General's Office. Marion Grantham Depo. Tr. at pp.24-30, Ex. C; Barbara Grantham Depo. Tr. at p.17, Ex. A. His evidence consists of alleged comments from unspecified people, whose identity he cannot even remember, saying that Mayor McAdams knew of his social media comments regarding Jody Bradley's authority as police chief to conduct stops. Marion Grantham Depo. Tr. at p.26-27, Ex. C. This alleged hearsay within hearsay is not competent summary judgment evidence. *State Farm Fire & Cas. Co. v. Amazon.com, Inc.*, 525 F. Supp. 3d 753, 755 (N.D. Miss. 2021) ("[T]he hearsay rule applies with equal force in the context of a summary judgment. Thus, summary judgment evidence cannot be based on hearsay." (cleaned up)).

And the evidence shows that neither Mayor McAdams nor Betty Stigler knew of Marion's alleged comments. Both affirmed that they did not know of any comments made by Marion. *See* Mayor McAdams Declaration, Ex. G; Betty Stigler Declaration, Ex. H. [6]

Nor do the Granthams have any competent summary judgment evidence that the Mayor or Betty Stigler had any part in having a parking ticket written. Again, the only evidence the Granthams have on this point is inadmissible hearsay within hearsay. *State Farm Fire & Cas. Co.*, 525 F. Supp. 3d at 755. *Compare* Marion Grantham Depo. Tr. at p.67 (police officer stated that he was told by "the mayor's office" to write the ticket), Ex. C *with* Mayor McAdams Declaration (she did not request ticket to be written), Ex. G *and* Betty Stigler Declaration (same),

[6] The Granthams decided not to depose either individual defendant or anyone else from the City or to conduct any written discovery. *See generally* Docket.

Ex. H. Nor is there any evidence that the Mayor had any part in having the pottery removed from the sidewalk. *See* Marion Grantham Depo. at pp.30-31, Ex. C; Barbara Grantham Depo. Tr. at p.22, Ex. A; Betty Stigler Declaration (she was not told by the Mayor to make Granthams remove pottery), Ex. H; Mayor McAdams Declaration (she received complaints about the pottery on the sidewalk but never told the Community Development department to have it removed), Ex. G.

Instead, the evidence shows that the Mayor received complaints about the Granthams' parking and sidewalk displays. Mayor McAdams Declaration, Ex. G. But she did not request any specific action be taken against the Granthams. *Id.* As to the sidewalk display, Betty Stigler simply attempted to enforce the sidewalk ordinance as she did with other businesses within the City. Betty Stigler Declaration, Ex. H. And she did so without citing or fining the Granthams. *Id.*; Marion Grantham Depo. Tr. at p.62, Ex. C.

Simply put, the Granthams have no evidence that any action was taken because of speech that occurred more than a year prior[7] rather than their violations of law which resulted in complaints made to the Mayor's office. *E.g., Nieves*, 139 S. Ct. at 1722. This defeats their claim.[8]

B. The Granthams' Equal Protection Selective Enforcement Claim must be dismissed.

The Granthams also bring a selective enforcement claim under the Equal Protection Clause of the Fourteenth Amendment. *See* Doc. No. 2. The basis of this claim is that they were singled out due to their speech. *Id.*

[7] Again, there is no allegation based on hearsay or otherwise that anybody within the City knew of Marion Grantham's December 2020 phone call to the Attorney General's office.

[8] Marion seemingly admitted that he does not believe the actions had anything to do with his speech but instead was because one of the Mayor's and Stigler's friends was opening up a flower and pottery shop. Marion Grantham Depo. Tr. at p.32, Ex. C.

It is important at the outset to note that it is unclear if this theory is even viable. At least one Mississippi district court has noted that such claims – alleging that the government's actions were motivated by the exercise of free speech – should be brought under the First Amendment and not the Equal Protection Clause. *See Craig v. City of Yazoo City, Miss.*, 984 F. Supp. 2d 616, 626 (S.D. Miss. 2013). This comports with the general rule that a Section 1983 claim should be brought under the more specific constitutional provision rather than the more general Fourteenth Amendment. *E.g.*, *Graham v. Connor*, 490 U.S. 386, 394 (1989).

If such a claim exists, though, it requires proof that (1) "the government official's acts were motivated by improper considerations, such as race, religion, or the desire to prevent the exercise of a constitutional right" and (2) that similarly-situated individuals were treated differently. *Craig*, 984 F. Supp. 2d at 624, 626; *Stout*, 717 F. App'x at 471-72. "[T]he conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation." *Lewis v. Smith*, 2022 WL 10965839, *4 (5th Cir. 2022).

Their claim necessarily must fail for the same reasons their First Amendment claim fails: (1) lack of constitutionally-protected activity on Barbara's part; (2) lack of knowledge of Marion's alleged speech; and (3) lack of causation.

But it also fails for lack of similarly-situated comparators. In their discovery responses, the Granthams were asked to identify all persons or businesses they felt were treated better than them, including all persons and businesses that they contend the City did not enforce the applicable ordinances against. *See* Barbara Grantham's Discovery Responses at Interrogatory No. 20, Ex. K; *see also* Marion Grantham Depo. Tr. at p.53, Ex. C (noting that he helped Barbara with her responses).

As to illegal parking, the Granthams listed several businesses. *See* Response to Interrogatory No. 20. This does not prove that a similarly-situated comparator was treated

differently than them. A business cannot park a car.[9] And Delta Boutique was not written a parking ticket – Marion Grantham was.[10]

The same with the sidewalk displays. In their discovery responses, the Granthams listed Perry's Pawn Shop, Classy Queens Boutique, Mississippi Gifts,[11] Delta Emporium,[12] an ice cream truck in front of Bank of Commerce, and unidentified photographers as their comparators.[13] But they have not shown that these businesses were similarly-situated to them or that they were treated better. The Granthams admit that they did not have a permit to display merchandise on the sidewalk. Marion Grantham Depo. Tr. at pp.53-54, Ex. C; Barbara Grantham Depo. Tr. at pp.34-35, Ex. A. And they also admit that they do not know if these other businesses did have a permit. Marion Grantham Depo. Tr. at pp.54-57, 59, Ex. C; Barbara Grantham Depo. Tr. at p.23, Ex. A. These differences matter. *See Beeler v. Rounsavall*, 328 F.3d 813, 817 (5th Cir. 2003) ("However, the relevant criterion here is not the two stores' proximity or the similarity of their products. Instead, the relevant question is whether the two stores were similarly situated under the Code.").

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[9] They also listed Betty Stigler as having an expired tag. *Id.* Stigler is not similarly-situated because they were not cited for having an expired tag. Marion Grantham Depo. Tr. at p.58, Ex. C.

[10] In discovery, the Granthams also produced more than 3,600 pictures, some of which purportedly show illegally parked vehicles. However, these pictures were not identified in the Interrogatory cited, nor did the Granthams identify with any sort of specificity those that they believe are their comparators. At his deposition, Marion admitted that he does not even know who owned these vehicles, and cannot know if, like them, the City received any complaints about these vehicles, if the police even saw them, or if, like them, these vehicles parked in a no parking zone for "probably five out of seven years." *See* Marion Grantham Depo. Tr. at p.65, 81, Ex. C.

[11] Mississippi Gifts is alleged to have had boxes on the sidewalk. It is doubtful that this is a "similarly-situated comparator" since the Granthams do not know if the boxes were trash or if they were goods. Marion Grantham Depo. Tr. at pp.55-56, Ex. C. Trash would not be a violation of the ordinance which prohibits displaying "goods, wares, or merchandise" on the sidewalk. Greenwood Ordinance Sec. 30-131, Ex. E.

[12] Marion Grantham alleges Delta Emporium has a food truck that sells on the sidewalk, but the owner is "black so he can do about what he wants to downtown." Marion Grantham Depo. Tr. at p.59, Ex. C. There is no race-based claim in this lawsuit. Doc. No. 2.

[13] They also listed Double Quick on Main Street as having "illegal banners and flags," The Landing as having an "illegal shed," and Sipps as having "illegal storage," but none of these are "similarly-situated" to them because they are not alleged to have displayed or sold merchandise on the sidewalk. And, in his testimony, Marion Grantham stated that a "black store" keeps merchandise out all the time but did not even know the name of the store much less any other information. Marion Grantham Depo. Tr. at p.59, 62, Ex. C.

They also do not know if Betty Stigler even saw these violations, ever spoke with the owners, or ever wrote the owners a citation. Marion Grantham Depo. Tr. at pp.55-57, Ex. C; Barbara Grantham Depo. Tr. at pp.23-24, Ex. A. And the evidence shows that Betty Stigler either did not know of the alleged violations or has spoken with the owners and told them to remove the merchandise, just as with the Granthams. Betty Stigler Declaration, Ex. H.

In sum, the Granthams have not shown that any action was taken due to their speech or that they were treated differently from similarly-situated comparators.

C. The individual defendants are entitled to Qualified Immunity.

Even if the Granthams could demonstrate a constitutional violation against Mayor McAdams and Betty Stigler, they still would be entitled to dismissal on qualified immunity grounds. This case should be decided under the constitutional prong, but this Court may skip straight to qualified immunity if it desires. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009); *but see Zadeh v. Robinson*, 928 F.3d 457, 479-80 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part) (advocating for a "merits analysis" instead of skipping to the question of "clearly established" law).

Officials are entitled to qualified immunity unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was "clearly established at the time." *Wesby*, 138 S. Ct. at 589-90 (citing *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). "Clearly established" means that, at the time of the official's conduct, the law was "'sufficiently clear' that every 'reasonable official would understand that what he is doing'" is unlawful. *Id.* (citation omitted). In other words, existing law must have placed the constitutionality of the official's conduct "beyond debate." *Id.* This demanding standard protects "all but the plainly incompetent or those who knowingly violate the law." *Id.* (citation omitted). It is Plaintiffs'

burden to defeat qualified immunity. *See Cunningham v. Castloo*, 983 F.3d 185, 191 (5th Cir. 2020).

Framework. Determining whether a plaintiff has satisfied his or her qualified-immunity burden involves two steps: (1) a nomination phase and (2) a qualification phase. *See id.*; *see also White v. Pauly*, 137 S. Ct. 548, 552 (2017); *Wesby*, 138 S. Ct. at 589-90. Ultimately, qualified immunity "'represents the norm, and courts should deny a defendant immunity only in rare circumstances.'" *Rich v. Palko*, 920 F.3d 288, 294 (5th Cir. 2019) (citation omitted).

Nomination Phase. *Vann v. Southaven*, 884 F.3d 307 (5th Cir. 2018) illustrates the nomination phase. There, a Fifth Circuit Panel reversed a grant of qualified immunity on a Fourth Amendment claim due to perceived factual disputes. *Id*. But after rehearing, the opinion was vacated. *Id*. at 310. Unlike the original opinion, the new opinion recognized that "[i]t is the plaintiff's burden to find a case in his favor[.]" *Id*. The plaintiff had "cited nary a pre-existing or precedential case . . . showing specific law on point[,]" so qualified immunity was reinstated. *Id*.

Following *Vann*, countless decisions from the Fifth Circuit have highlighted the plaintiff's obligation of pointing to a specific case. *E.g.*, *Nerio v. Evans*, 974 F.3d 571, 575 (5th Cir. 2020) (explaining that "a party must 'identify a case where an officer acting under similar circumstances . . . was held to have violated the" Constitution) (emphasis in original; quoted Supreme Court case omitted).[14] And the plaintiff's nomination obligation is what Supreme Court precedent demands. *See White*, 137 S. Ct. at 552 (granting qualified immunity due to "fail[ure] to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment").

[14] *See also Rich*, 920 F.3d at 297 ("Rich has failed to identify precedent clearly establishing that the officers' conduct violated Dupuis-Mays's constitutional rights"); *Morrow v. Meachum*, 917 F.3d 870, 876 (5th Cir. 2019) (holding that the appellants "have not identified a controlling precedent"); *Bustillos v. El Paso Cty. Hosp. Distr.*, 891 F.3d 214, 222 (5th Cir. 2018) ("Appellant has not carried her burden of pointing this panel to any case that shows, in light of the specific context of this case, that the Doctors' or Nurses' conduct violated clearly established law.").

Qualification Phase. The next step, once a particular case has been identified, is to determine if the nominated case qualifies as "clearly established law." This qualification determination involves inquiry into whether the identified case is both "authoritative" and "specific." *See Wesby*, 138 S. Ct. at 589-90. The Supreme Court reversed the D.C. Circuit in *Wesby* for "not follow[ing]" the sub-steps. *Id*. at 591.

Authoritative Requirement. Any nominated case must be "authoritative" precedent. In 2011, the Fifth Circuit identified three authoritative sources of clearly established law: (1) Supreme Court decisions, (2) Fifth Circuit decisions, or (3) "a robust consensus of persuasive authority[,]" i.e. decisions not from the Supreme Court or the Fifth Circuit. *See Morgan v. Swanson*, 659 F.3d 359, 371-72 (5th Cir. 2011). But this articulation has been called into doubt in recent years.

In 2018, the Supreme Court explained, "We have not yet decided what precedents—other than our own—qualify as controlling authority for purposes of qualified immunity." *Wesby*, 138 S. Ct. at 591 n.8; *see also City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019) (Supreme Court was only willing to "[a]ssum[e] without deciding that a court of appeals decision may constitute clearly established law for the purposes of qualified immunity"). Then, in 2021, the Supreme Court was willing only to "assume" that Circuit precedent matters. *See Rivas-Villegas v. Cortesluna*, 2021 WL 4822662, *2 (Oct. 18, 2021) ("Even assuming that controlling Circuit precedent clearly establishes law for purposes of § 1983, *LaLonde* did not give fair notice to Rivas-Villegas. He is thus entitled to qualified immunity.").[15]

[15] These written decisions are consistent with oral suggestions from the Justices over the course of many years. *See*, *e.g.*, Oral Arg. Tr. at p.14 from *Lane v. Franks*, 573 U.S. 228 (2014) (noting that Chief Justice Roberts questioned counsel as follows: "You spend a fair amount of time in your brief talking about court of appeals decisions from other circuits. . . . Do you really think we should be looking at the opinions from other circuits in deciding whether the law was clearly established in a different circuit?").

The Fifth Circuit has taken notice of these statements by the Supreme Court. In the 2020 *Nerio* case, for example, the court articulated the "authoritativeness" requirement as follows: "Although we know the Supreme Court's decisions can clearly establish the law, the Supreme Court has never held that our decisions can do the same." *See* 974 F.3d at 576 n.2. Just last week, Judge Oldham dissented from a denial of qualified immunity, writing that "[a]bsent a clear instruction from our Nation's highest court regarding the relevance of circuit precedent, we cannot expect everyday officers to draw the necessary inferences from our large, ever-growing, and often-contradictory precedents." *Boyd v. McNamara*, --- F.4th ---, 2023 WL 4702122, *7 (5th Cir. July 24, 2023) (Oldham, J., dissenting in part).

Specificity Requirement. Even if "authoritative," a nominated case does not count as clearly established law unless it satisfies the "specificity" requirement. The starting point under this prong is an evaluation of the alleged constitutional violation in terms of the "particular conduct" at issue. *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015). Importantly, plaintiffs must not only identify the analogous case but must also "explain the analogy." *Joseph ex rel. Estate of Joseph v. Bartlett*, 981 F.3d 319, 346 (5th Cir. 2020).

Two recent Supreme Court decisions highlight the importance of Plaintiffs pointing to a sufficiently specific case. In both *City of Tahlequah v. Bond*, 2021 WL 4822664 (Oct. 18, 2021) and *Rivas-Villegas*, 2021 WL 4822662, the Supreme Court unanimously reversed denials of qualified immunity because it was not clearly established that the particular conduct in light of the specific contexts of those cases violated the Constitution. The Court rejected the cases relied on by the plaintiffs and the lower courts, finding that "a reasonable officer could miss the connection between [the cases cited] and [the situation they were confronted with]." *Bond*, 2021 WL 4822664, at *2.

Once the factual context is identified, the question becomes whether the authoritative precedent places the conduct "beyond debate." *See White*, 137 S. Ct. at 551. A proffered case must "squarely govern" the situation at issue, not just share "factual similarities" with a prior precedent. *Morrow*, 917 F.3d at 876; *Perry v. Durborow*, 892 F.3d 1116, 1126 (10th Cir. 2018). Unless every single reasonable officer on the street would know "in the blink of an eye" that his or her conduct is unconstitutional because of the authoritative precedent, then qualified immunity must be granted. *See Morrow*, 917 F.3d at 876. This requires a high "degree of specificity." *Wesby*, 133 S. Ct. at 590 (citation omitted). The Supreme Court has "repeatedly stressed that courts must not "define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced." *Id*. (citation omitted). This principle reflects a "manifestation of the law's general concern about retroactive punishment or liability." *Wesby v. District of Columbia*, 816 F.3d 96, 110 (D.C. Cir. 2016) (Kavanaugh, J., dissenting) (citing Supreme Court precedent).

Application of the Qualified Immunity Framework. Applying these standards to this case, there is no governing authority holding that Mayor McAdams or Betty Stigler acted objectively unreasonable under clearly established law. The preceding discussion explains that the Granthams were indeed violating the law; that neither the Mayor nor Betty Stigler knew of Marion Grantham's alleged speech; that the City had received complaints about both the Granthams' illegal parking and their sidewalk display; that the Granthams were not arrested; that they never even saw the parking ticket, paid it, went to court for it, or suffered any adverse action from it; that they were not cited or fined for their sidewalk display; and that they have continued to sell pottery inside Delta Boutique and at other locations within the City. Nor is there any caselaw from the Supreme Court or Fifth Circuit clearly establishing that a warning and a $25 parking ticket, both of which were for clear violations of City ordinances, meet the minimum

threshold to establish an adverse action. At minimum, these facts distinguish this case from others and mandate qualified immunity.

In sum, the Fifth Circuit has reiterated that "[t]he qualified-immunity doctrine makes" obtaining "money damages from the personal pocket of a law enforcement officer" "difficult in every case." *See Morrow*, 917 F.3d at 874. In that same opinion, the Fifth Circuit explained that qualified immunity presented a "heavy burden" for plaintiffs and that the denial of qualified immunity is an "extraordinary remedy." *Id*. at 874-76. Since the Granthams will not be able to demonstrate that Mayor McAdams or Betty Stigler acted objectively unreasonably under clearly established law, they all are at minimum entitled to qualified immunity.

D. The Granthams have not alleged an unconstitutional policy or custom of the City.

It is well established that, "[w]ithout an underlying constitutional violation, an essential element of municipal liability is missing." *Doe ex rel. Magee v. Covington County School Dist. ex rel. Magee*, 675 F.3d 849, 867 (5th Cir. 2012). Because the Granthams cannot demonstrate a constitutional violation against the individual defendants, there necessarily can be no municipal liability. *Id*.

But even if the Granthams could demonstrate a constitutional violation, a mere violation is never enough, since municipalities are not vicariously responsible for the actions or inactions of their employees. *See Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). There instead must be "something more" to impose liability on a municipality, i.e. a demonstration that the constitutional violation occurred because of a municipal policy or custom. *Id*. This "requires proof of three elements in addition to the underlying claim of a violation of rights: a policymaker; an official policy; and a violation of constitutional rights whose 'moving force' is the policy or custom." *Cox v. City of Dallas,* 430 F.3d 734, 748 (5th Cir.2005) (quoting *Piotrowski v. City of Houston,* 237 F.3d 567, 578 (5th Cir.2001) (internal

quotation marks omitted)). The final element requires that the Granthams prove causation; that is, that the alleged violation was caused by the policy or custom. *Crawford,* 260 F. App'x at 652.

An official policy can be shown in two ways: (1) "a policy statement, ordinance, regulation or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority[,]" or (2) "a persistent widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy." *Evans v. City of Houston*, 246 F.3d 344, 358 (5th Cir. 2001). A policy may also exist if the "person who committed the challenged act is in charge of policymaking[.]" *Okon v. Harris Cty. Hosp. Dist.*, 426 F. App'x 312, 316 (5th Cir. 2011).

In their complaint, the Granthams failed to even allege a municipal policy or custom of retaliation or selective enforcement exists. *See generally* Doc. No. 2. Their claim against the City should be dismissed for this reason alone.

To the extent that the Granthams are seeking to travel under the "rare" single-incident exception, their claim still fails. *See Webb v. Town of St. Joseph*, 925 F.3d 209, 215 (5th Cir. 2019). To begin, the identification of who acts as a policymaker is a question of state law. *See Webb v. Town of St. Joseph*, 925 F.3d 209, 215 (5th Cir. 2019). Under Mississippi law, the City Council is the "governing authority" for a municipality. *See*, *e.g.*, *Sockwell v. Calhoun City, Miss.*, 2019 WL 3558173, *2 (N.D. Miss. 2019). The Granthams' claim fails because they have not alleged anything the Council supposedly did wrong. *See* Doc. No. 2.

But no matter which avenue they are traveling under, whether a policy, custom, or single-incident, the Granthams are still required to prove "moving force" causation. To do that, they must prove that the City acted with deliberate indifference, or "that a constitutional violation is a

plainly obvious consequence of the final policymaker's decision." *Doe*, 964 F.3d at 366. "To succeed, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Doerr v. Sisson*, 563 F. App'x 291, 294 (5th Cir. 2014) (quoting *Valle*, 613 F.3d at 542). "Deliberate indifference is a high standard—'a showing of simple or even heightened negligence will not suffice.'" *Valle*, 613 F.3d at 542. As explained above, the Granthams have no evidence to suggest that the City or any policymaker had any degree of unconstitutional culpability.

State Law

The Granthams also bring a tortious interference with business relations claim under state law against all defendants.

To begin, the City retains sovereign immunity under the Mississippi Tort Claims Act for any claim involving malice. *See* Miss. Code § 11-46-5. Malice is an essential element of tortious interference claims. *See Zumwalt v. Jones Cty. Bd. of Super's*, 19 So. 3d 672, 688 (Miss. 2009). The claim against the City should therefore be dismissed as barred by sovereign immunity. *Id.*

But the claim also fails against the individual defendants. To succeed against the individual defendants, the Granthams must show: (1) the acts were intentional and willful; (2) the acts were calculated to cause damage to the plaintiffs in their lawful business; (3) the acts were done with the unlawful purpose of causing damage and loss without right or justifiable cause on the part of the defendant (which constitutes malice); and (4) actual loss and damage resulted. *James v. Thompson*, 356 So. 3d 86, 89 (Miss. 2022). The Granthams' claim fails at each step.

As to the first, against Mayor McAdams, the Granthams have no evidence as to any intentional or willful act that is the subject of this lawsuit that was done by her. *See* Mayor McAdams Declaration, Ex. G.

As to the second element, the Granthams have no evidence that any act was done to cause damage to their business. To start, they have made no allegation that the parking ticket that was never paid caused damage to their business. *See* Doc. No. 2. They are only seeking damages from lost profits due to the decline in sales of Mexican pottery. *Id.* But, they also have not pointed to any evidence to suggest that Mayor McAdams or Betty Stigler acted with the intent of hurting their business. The Granthams were not prevented from selling Mexican pottery but were simply prevented from displaying it on the City sidewalk.

As to the third element, the Granthams were required to show that the defendants acted with an "unlawful" purpose and "without right or justifiable cause." In the employment law context, **c**ourts have expressly recognized that "conduct related to a legitimate, employment-related objective constitutes justifiable acts, which ***cannot*** 'give rise to an inference of malice.'" *Thomas v. Cohen*, 2019 WL 2146253, *8 (N.D. Miss. May 16, 2019) (emphasis added) (citing *Progressive Cas. Ins. v. All Care, Inc.*, 914 So. 2d 214, 219 (Miss. Ct. App. 2005). Such a holding is logical since, when a public employee is conducting himself in a way that is related to a "legitimate, employment-related objective," that employee is necessarily acting within the course and scope of his employment and cannot be incumbered with personal liability for his actions. *See* Miss. Code § 11-46-7(2).

As Director of Community Development, one of Betty Stigler's duties is to enforce ordinances related to obstructions on City sidewalks. Betty Stigler Declaration, Ex. H. As mayor, it is Mayor McAdams responsibility to "take care that the laws and ordinances are

executed." Miss. Code § 21-8-15. Therefore, they had a legitimate objective and, indeed, a duty to ensure that the Granthams were complying with the law. This defeats the Granthams' claim.

Finally, the Granthams have not shown actual damage occurred. Their alleged damages are based on nothing more than speculation. The Granthams, through Delta Boutique, have continued to buy and sell Mexican pottery. Marion Grantham Depo. Tr. at pp.96-101, 105-106, Ex. C. They have no evidence to support their alleged lost profits, affirming that they cannot separate what sales were made of Mexican pottery versus other items sold by Delta Boutique. *Id.* at pp.94-96; Barbara Grantham Depo. Tr. at pp.29-31, Ex. A. They only displayed Mexican pottery outside Delta Boutique on a few occasions over the course of a month prior to being told to remove it from the sidewalk. Marion Grantham Depo. Tr. at pp.43-44, 100, Ex. C; Barbara Grantham Depo. Tr. at p. 30, Ex. A. And, even more important, Delta Boutique operated at a net loss in 2018, 2019, and 2020, but operated at a net profit in 2021.[16] Tax Returns, Ex. L. They simply cannot show that they suffered any damage by being required to simply move the Mexican pottery inside.

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The Granthams do not have any evidence that any action was taken by Mayor McAdams or Betty Stigler with the intent of hurting their business, without right or justifiable cause or with malice, or that actually damaged their business. Their tortious interference claim should be dismissed.

[16] The loss from 2018 is shown on line 3 of the 2019 Form 8995 (Qualified business net (loss) carryforward from the prior year). Delta Boutique had a net loss of $4,760 carried forward from 2018. In 2019, Delta Boutique had a net loss of $3,622 as shown on Line 31 of the 2019 Schedule C. In 2020, Delta Boutique again had a net loss of $6,914 as shown on Line 31 of the 2020 Schedule C. In 2021, Delta Boutique had a net profit of $3,946, as shown on Line 31 of the 2021 Schedule C.

IV. CONCLUSION

For all of these reasons, the Granthams cannot satisfy their burden of providing legally-sufficient evidence from which a jury could find in their favor. All claims must be dismissed as a matter of law, for neither 42 U.S.C. § 1983 nor state law provide the Granthams with an avenue for relief. Summary judgment should issue on all claims.

Dated: July 31, 2023.

RESPECTFULLY SUBMITTED,

PHELPS DUNBAR, LLP

BY: */s/ Mallory K. Bland*
G. Todd Butler, MS Bar #102907
Mallory K. Bland, MS Bar #105665
4270 I-55 North
Jackson, Mississippi 39211-6391
Post Office Box 16114
Jackson, Mississippi 39236-6114
Telephone: (601) 352-2300
Telecopier: (601) 360-9777
Email: butlert@phelps.com
Mallory.bland@phelps.com
ATTORNEYS FOR MUNICIPAL DEFENDANTS

CERTIFICATE OF SERVICE

I certify that, on July 31, 2023, I had a copy of this document electronically filed with the Clerk of the Court, using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Mallory K. Bland
MALLORY K. BLAND