

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 25-21827-CIV-DAMIAN

KAREN HUNTER JACKSON,

Plaintiff,

vs.

CITY OF MIAMI GARDENS,

et al.,

Defendants.

**OMNIBUS ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT [ECF NO. 58] AND DENYING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [ECF NO. 55]**

THIS CAUSE is before this Court on: (1) Plaintiff, Karen Hunter Jackson's, Motion for Partial Summary Judgment, filed May 19, 2026 [ECF No. 58 (the "Plaintiff's Motion")]; and (2) Defendants, City of Miami Gardens, Rodney Harris, and Richard Robinson's, Motion for Summary Judgment, filed May 19, 2026 [ECF No. 55 (the "Defendants' Motion")].

THIS COURT has considered the Motions, the Responses and Replies thereto (*see* ECF No. 67 ("Defendants' Response"); ECF No. 69 ("Plaintiff's Response"); ECF No. 72 ("Defendants' Reply"); ECF No. 74 ("Plaintiff's Reply")), the parties' supporting, opposing, and reply statements of material facts (*see* ECF Nos. 56, 59, 68, 70, 73, 75), the pertinent portions of the record, and relevant authorities and is otherwise fully advised. This Court also heard argument from the parties who appeared before the undersigned for a hearing on the Motions on August 18, 2026. [ECF No. 83]. Both Motions are fully briefed and ripe for adjudication.

I.RELEVANT FACTS

This action arises from Defendant City of Miami Gardens' (the "City") enforcement of its public-participation policy (the "Policy") during the public-comment portion of the April 9, 2025 City Council meeting. Plaintiff, Karen Hunter Jackson ("Plaintiff" or "Hunter Jackson"), alleges that the City and several municipal officials violated her rights under the First and Fourteenth Amendments by restricting her speech under the Policy.

The following facts are drawn from the parties' statements of facts and the responses and replies thereto. Unless otherwise indicated, the facts set forth below are undisputed.

A. The Public-Participation Policy.

The City's public-participation policy is set forth in the City's Charter, the City of Miami Gardens Charter. *See* City of Miami Gardens, Fla., Ordinance No. 2003-07, § 2-50(a) (2003); Ordinance No. 2023-004-460, § 2-60(a)–(f) (2023) (the "Policy"). The Policy governs public comments at City Council meetings. At all times relevant to this suit, Defendant Mayor Rodney Harris presided over those meetings and possessed final authority to enforce the Policy during the public comment portion of the meeting. *See* Plaintiff's Statement of Material Facts [ECF No. 59 ("Pl. SOF")] ¶¶ 14–18; Defendants' Response to Plaintiff's Statement of Material Facts [ECF No. 68 ("Def. Resp. SOF")] ¶¶ 14–18.

As relevant here, the Policy restricted remarks directed to individual Council members and prohibited speech deemed "personal" or "abusive." *See* Pl. SOF ¶¶ 7–9; Def. Resp. SOF ¶¶ 7–9. Ms. Hunter Jackson contends that these provisions impermissibly discriminate and/or permit such discrimination on the basis of viewpoint and vest the presiding officer with

insufficiently constrained discretion. Defendants dispute Ms. Hunter Jackson's legal characterization of the Policy.

B. The April 9, 2025 City Council Meeting.

During the public-comment portion of the April 9, 2025 City Council Meeting, Ms. Hunter Jackson approached the podium and addressed the City Council. Pl. SOF ¶ 26; Def. Resp. SOF ¶ 26. Ms. Hunter Jackson spoke calmly, used neither profanity nor threats, and did not disrupt the proceedings. Pl. SOF ¶ 27; Def. Resp. SOF ¶ 27. After Ms. Hunter Jackson referred to Councilwoman Katrina Wilson by name, Mayor Harris instructed Ms. Hunter Jackson not to identify individual Council members. Pl. SOF ¶ 29; Def. Resp. SOF ¶ 29. When Ms. Hunter Jackson nonetheless continued speaking, her microphone was muted, and she was removed from the meeting. Pl. SOF ¶¶ 32–35; Def. Resp. SOF ¶¶ 32–35.

Mayor Harris testified that Ms. Hunter Jackson's repeated use of Councilwoman Wilson's name prompted the interruption of her remarks, the muting of her microphone, and her removal. Pl. SOF ¶ 35; Def. Resp. SOF ¶ 35. Importantly, all of the City Council meetings are video and audio recorded, and the recordings of the relevant meetings are included in the Summary Judgment record. *See* Pl.'s Video Exs. 10–20; ECF No. 59-10 at 1–2 (index of conventionally filed video exhibits).

C. Treatment Of Other Speakers.

The record also reflects that other speakers referred to Council members by name and were not interrupted or otherwise stopped by Mayor Harris. Specifically, at the April 9, 2025 meeting, Christine Malcolm identified Vice Mayor Robert Stephens by name; Brenda Martin Providence identified Councilwoman Linda Julien by name; Charity Mathis named Vice Mayor Stephens, Councilwoman Katrina Baskin, and Councilwoman Shannon Campbell

Powell; and Francis Ragoo praised Councilwoman Powell by name. Pl. SOF ¶¶ 40–43; Def. Resp. SOF ¶¶ 40–43. The record further reflects that during other City Council meetings, speakers referred to Council members by name without repercussions. Specifically, on June 14, 2023, interns Clint, John, and Kayden identified Councilwoman Julien by name; on March 26, 2025, an unidentified speaker repeatedly named and praised Councilwoman Wilson; on May 28, 2025, an unidentified speaker named Vice Mayor Stephens; and, on November 12, 2025, a speaker named Mr. Ziegler identified Councilwoman Julien by name. Pl. SOF ¶¶ 47–50; Def. Resp. SOF ¶¶ 47–50.

The parties also do not dispute that, during a March 26, 2025, meeting, Councilwoman Wilson referred to Ms. Hunter Jackson by name and called her a “big girl,” accused her of engaging in “dirty politics,” and precipitated a recess without facing comparable enforcement or consequences. *See* Pl. SOF ¶ 22; Def. Resp. SOF ¶ 22.

D. The City’s Amendment Of The Policy.

In February 2026, after Ms. Hunter Jackson commenced this action, the City amended the Policy. *See* Pl. SOF ¶¶ 56, 59–60; Def. Resp. SOF ¶¶ 56, 59–60; ECF No. 59-8 (“Amended Policy”). The Amended Policy repealed the direct-address restriction but retained a prohibition on “abusive” speech and added a “personally directed abusive” category. *See* Am. Policy § 2-60(f)(1)–(2).

The Amended Policy also incorporates dictionary cross-references for the definitions of the challenged terms. *See* Am. Policy § 2-60(f)(1)–(2). The parties dispute whether those references provide an objective standard sufficient to cure the alleged constitutional deficiencies and whether the Amended Policy renders Ms. Hunter Jackson’s request for prospective relief moot.

II. PROCEDURAL HISTORY

Ms. Hunter Jackson commenced this action by filing a Complaint [ECF No. 1 (“Complaint”)] on April 22, 2025. In the original Complaint, Ms. Hunter Jackson asserted two claims under 42 U.S.C. § 1983: a facial First Amendment challenge to the Policy against the City (Count I), and an as-applied First Amendment challenge against the City, Mayor Harris, Officer Robinson, Officer Ivette Richardson, and Officer Emmanuel Jeanty (Count II). *See* Compl. at 11–15. After the individual Defendants filed a Motion to Dismiss the Complaint [ECF No. 14] on June 5, 2025, Ms. Hunter Jackson filed the Amended Complaint [ECF No. 16 (“Amended Complaint”)]. In the Amended Complaint, Ms. Hunter Jackson retained the facial challenge against the City as Count I, recast the as-applied challenge against the City alone as Count II, and added a separate unlawful-restraint claim against the City and the four individual Defendants as Count III. *See* Am. Compl. at 11–17. She also omitted the official-capacity claim against Mayor Harris. *Compare* Compl. at 1, 13–15, *with* Am. Compl. at 1, 13–17.

Mayor Harris and Officers Robinson, Richardson, and Jeanty filed a Motion to Dismiss the Amended Complaint on June 19, 2025, seeking dismissal of Count III for failure to allege a constitutional deprivation and on qualified immunity grounds. [ECF No. 18]. On March 31, 2026, this Court granted that motion in part and denied it in part. [ECF No. 48 (“Dismissal Order”)]. This Court dismissed Count III without prejudice as to Officers Richardson and Jeanty but permitted the claim to proceed against Mayor Harris and Officer Robinson. *Id.* at 10–16. Accordingly, the claims now before this Court are: (1) the facial challenge against the City under Count I; (2) the as-applied challenge against the City under

Count II; and (3) the unlawful-restraint claim against the City, Mayor Harris, and Officer Robinson under Count III.

III. LEGAL STANDARD

“A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a). “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* In reviewing a motion for summary judgment, this Court is “required to view the evidence and all factual inferences therefrom in the light most favorable to the non-moving party, and resolve all reasonable doubts about the facts in favor of the non-movant.” *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013) (quoting *Skop v. City of Atlanta*, 485 F.3d 1130, 1143 (11th Cir. 2007)). Importantly, “at the summary judgment stage the judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter,” but only “to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

In opposing a motion for summary judgment, the non-moving party may not rely solely on the pleadings but must show by affidavits, depositions, answers to interrogatories, and admissions that specific facts exist demonstrating a genuine issue for trial. *See* Fed. R. Civ. P. 56(c)(1)(A); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A mere “scintilla” of evidence supporting the opposing party’s position will not suffice; instead, there must be a sufficient showing that the jury could reasonably find for that party. *Anderson*, 477 U.S. at 252; *see also Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990).

“An issue of fact is material if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case.” *Burgos v. Chertoff*, 274 F. App’x 839, 841 (11th Cir. 2008) (quoting *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997)). A factual dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the non[-]moving party.” *Anderson*, 477 U.S. at 248. Further, “[f]or factual issues to be considered genuine, they must have a real basis in the record. For instance, mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion.” *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005) (citation omitted).

The standard of review for cross-motions for summary judgment does not differ from the standard applied when only one party files a motion, but simply requires a determination of whether either of the parties deserves judgment as a matter of law on the facts that are not disputed. *Am. Bankers Ins. Group v. United States*, 408 F.3d 1328, 1331 (11th Cir. 2005). The Court must consider each motion on its own merits, resolving all reasonable inferences against the party whose motion is under consideration. *Id.* The Eleventh Circuit has explained that “[c]ross-motions for summary judgment will not, in themselves, warrant the court in granting summary judgment unless one of the parties is entitled to judgment as a matter of law on facts that are not genuinely disputed.” *United States v. Oakley*, 744 F.2d 1553, 1555 (11th Cir. 1984). Cross-motions may, however, be probative of the absence of a factual dispute where they reflect general agreement by the parties as to the controlling legal theories and material facts. *Id.* at 1555–56.

Finally, where, as here, video evidence clearly depicts the events, courts accept the video’s portrayal and view the facts in the light shown by the video. *Baker v. City of Madison, Ala.*, 67 F.4th 1268, 1277–78 (11th Cir. 2023) (citing *Scott v. Harris*, 550 U.S. 372, 381 (2007)).

Where a video on the record “obviously contradicts” a party’s version of events, “courts will accept the video’s depiction of the events as controlling.” *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1315 (11th Cir. 2010); *see also Morton v. Kirkwood*, 707 F.3d 1276, 1284 (11th Cir. 2013) (“where an accurate video recording completely and clearly contradicts a party’s testimony, that testimony becomes incredible.”).

IV. DISCUSSION.

Because the Motions substantially overlap and present the same principal issues from opposing perspectives, this Court addresses them together on an issue-by-issue basis. Where a party’s affirmative arguments differ from its arguments in opposition to the competing Motion, this Court identifies and addresses those differences separately.

A. Whether Counts I And II Of The Amended Complaint Are Moot.

In Counts I and II of the Amended Complaint, Ms. Hunter Jackson asserts claims against the City for violations of her Constitutional right to free speech pursuant to 42 U.S.C. § 1983 by asserting a facial challenge to the City’s Public Participation Policy in Count I and an as-applied challenge to the Policy in Count II. Defendants argue in both their Motion and their Response to Plaintiff’s Motion that the City’s February 2026 amendment of the Policy moots Counts I and II insofar as Ms. Hunter Jackson seeks declaratory, injunctive, or other prospective relief. They maintain that the challenged provisions are no longer effective, the City adopted and has adhered to the Amended Policy in good faith, and the City does not intend to reenact the former Policy. *See* Def. Mot. at 5–8; Def. Resp. at 5–9. Defendants further contend that Ms. Hunter Jackson may not avoid mootness by asserting through her summary-judgment briefing an unpled constitutional challenge to the Amended Policy. Def. Reply at 2–5.

Ms. Hunter Jackson contends in both her Motion and her Response to Defendants' Motion that the Amended Policy does not moot Counts I and II because the amendment still retains the allegedly standardless prohibition on "abusive" speech, adds a "personally directed abusive" category, and does not eliminate a reasonable possibility that the challenged conduct will recur. *See* Pl. Mot. at 13–17; Pl. Resp. at 2–7. Ms. Hunter Jackson explains that she is not asserting a new, freestanding constitutional claim by referring to post-Complaint conduct but that she instead relies on the Amended Policy as evidence bearing on voluntary cessation, recurrence, and prospective relief. She also argues that the amendment cannot moot her claims for damages arising from the completed enforcement action. *See* Pl. Resp. at 3–7; Pl. Reply at 3–6.

In *Harrell v. The Florida Bar*, the Eleventh Circuit explained the general policy that "a federal court has no authority 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" 608 F.3d 1241, 1265–67 (11th Cir. 2010) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal citations omitted)). The court also acknowledged, "It has long been the rule that 'voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot.'" *Id.* (quoting *Nat'l Adver. Co. v. City of Miami*, 402 F.3d 1329, 1333 (11th Cir. 2005); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). As the Supreme Court elucidated, "Since the defendant is 'free to return to his old ways,'" *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953), he bears a "heavy burden" of demonstrating that his cessation of the challenged conduct renders the controversy moot, *Laidlaw*, 528 U.S. at 189 (citation omitted).

To carry its heavy burden, a defendant must show that (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (citations omitted). As the *Harrell* court explained, “[W]hen a party abandons a challenged practice freely, the case will be moot only if it is ‘*absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur.’” 608 F.3d at 1265–67 (quoting *Alabama v. U.S. Army Corps of Eng’rs*, 424 F.3d 1117, 1131 (11th Cir. 2005) (quoting *Laidlaw*, 528 U.S. at 189)).

The Eleventh Circuit applies a “rebuttable presumption” in favor of governmental actors when a challenged provision is repealed, so that “a challenge to a government policy that has been *unambiguously terminated* will be moot in the absence of some reasonable basis to believe that the policy will be reinstated if the suit is terminated.” *Troiano v. Supervisor of Elections in Palm Beach Cnty.*, 382 F.3d 1276, 1283–85 (11th Cir. 2004); *see also Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328–29 (11th Cir. 2004) (“[G]overnmental entities and officials have been given considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities.”). Nevertheless, voluntary cessation of offensive conduct will only moot litigation “if it is clear that the defendant has not changed course simply to deprive the court of jurisdiction.” *Nat’l Adver. Co.*, 402 F.3d at 1333.

Courts consider the content and timing of the change when determining if it moots a legal challenge. Specifically, a defendant’s cessation before receiving notice of a legal challenge weighs in favor of mootness, *Troiano*, 382 F.3d at 1285, whereas cessation that occurs “late in the game” will make a court “more skeptical of voluntary changes that have

been made.” *Burns v. Pa. Dep’t of Corr.*, 544 F.3d 279, 284 (3d Cir. 2008). And courts consider whether a well reasoned justification for the cessation indicates that the ceasing party intends to hold steady in its revised (and presumably unobjectionable) course. *See Troiano*, 382 F.3d at 1285 (finding challenge moot where governmental defendant ceased challenged behavior on a “well reasoned” basis); *Christian Coal. of Ala. v. Cole*, 355 F.3d 1288, 1292 (11th Cir. 2004) (holding that challenge to application of state judicial canons to certain conduct was moot where governmental defendant represented to court that it would not file charges against the plaintiffs on the basis of recent Supreme Court precedent).

The timing and content of the decision to change an offending policy are also relevant in assessing whether the defendant’s “termination” of the challenged conduct is sufficiently “unambiguous” to warrant application of the *Troiano* presumption in favor of governmental entities. *Cf. Rothe Dev. Corp. v. Dep’t of Def.*, 413 F.3d 1327, 1333–34 (Fed. Cir. 2005) (holding that *Troiano* presumption “d[id] not apply” because, *inter alia*, “the government ha[d] not provided sufficient evidence that the allegedly offending conduct w[ould] not recur”).

Here, the record reflects that the City’s Amended Policy repealed the direct-address restriction but retained the prohibition on “abusive” speech and added a “personally directed abusive” category. *Compare* Policy *with* Am. Policy § 2-60(f)(1)–(2). The City does not dispute that the Amended Policy retains the “abusive” prohibition and adds a new “personally directed abusive” category. *See* Def. Resp. SOF ¶ 60. Moreover, the City’s Rule 30(b)(6) representative and City Attorney both testified that “abusive” is subjective and “may mean different things to different people.” *See* ECF No. 59-3 (30(b)(6) witness Deposition) at 72:2–6, 102:10–11; ECF No. 59-4 (Bataille Continued Deposition) at 95:1–6.

The Amended Policy does add dictionary cross-references in an apparent attempt to avoid the type of ambiguity prohibited by the Eleventh Circuit’s opinion in *Moms for Liberty–Brevard County v. Brevard Public Schools*, 118 F.4th 1324, 1335–38 (11th Cir. 2024). See Am. Policy § 2-60(f)(1)–(2). This attempt does not, however, provide a cure to the ambiguity by applying an objective standard. Instead, the incorporated sources proscribe “harsh, insulting language” and supply meanings that do not meaningfully constrain enforcement. As the City’s witnesses acknowledged, “abusive” is subjective and may mean different things to different people. At bottom, a standard like that included in the Amended Policy, which permits the presiding officer to decide, without objective criteria, whether criticism is too harsh leaves speakers without fair notice and invites selective enforcement.

Under these circumstances, Defendants have not carried their formidable burden of making it absolutely clear that the challenged conduct cannot reasonably be expected to recur. *Laidlaw*, 528 U.S. at 189; *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). By replacing the challenged provision with one that differs only slightly and does not eliminate the ambiguity at issue, the City has not satisfied its burden. *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 (1993). Moreover, the timing of the amendment does not weigh in favor of Defendants given that the Amended Policy was enacted after this action began, while the City continued to defend the enforcement decision, yet it still preserved the same standardless “abusive” criterion. In other words, the City’s actions in amending the Policy do not amount to a prompt, unequivocal repeal that leaves no reasonable prospect of recurrence. See *Harrell*, 608 F.3d at 1266–67. Therefore, the City has not shown that Count I of the Amended Complaint is moot based on the amendment of the Policy.

Moreover, while Defendants challenge the availability of prospective relief in connection with Ms. Hunter Jackson's "as applied" challenge in Count II, this Court agrees with Ms. Hunter Jackson that Count II is not moot insofar as she seeks nominal damages for a completed constitutional injury. *See Moms for Liberty*, 118 F.4th at 1332–33. Although the Amended Policy may affect the availability of prospective relief, it cannot erase an accrued claim for damages arising from past enforcement.

This Court agrees with Defendants that Ms. Hunter Jackson cannot assert a new constitutional challenge by way of her Reply Memorandum. Ms. Hunter Jackson may, however, rely on the post-Complaint enactment of the Amended Policy as evidence bearing on voluntary cessation, recurrence, and the availability of prospective relief. A court may consider a replacement enactment adopted during litigation in determining whether the pleaded controversy remains live. *See Ne. Fla. Chapter*, 508 U.S. at 662–63. Any injunctive relief must, however, remain confined to the provisions, enforcement practices, and constitutional injury fairly encompassed by the Amended Complaint.

Finally, under the circumstances presented, Defendants have not shown that the unaccepted offer of judgment moots Count II. An unaccepted offer is a legal nullity that leaves the parties' interests unchanged. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 162, 165 (2016). The parties' unconsummated settlement discussions likewise do not establish that Ms. Hunter Jackson might have received complete relief or otherwise lost her concrete interest in the litigation. In any event, evidence of those negotiations generally is not admissible to prove or disprove the validity or amount of the disputed claim. *See Fed. R. Evid.* 408(a). Ms. Hunter Jackson's request for nominal damages provides concrete redress for an alleged completed

violation, regardless of any collateral fee motivation. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 290–92 (2021).

Accordingly, for all the reasons discussed above, this Court concludes that Ms. Hunter Jackson’s claims are not moot, and, therefore, this Court considers the parties’ arguments directed at the merits of the claims asserted in the Amended Complaint.

B. Count I – The Facial Challenge To The Original Policy.

In Count I of the Amended Complaint, Ms. Hunter Jackson lodges a facial challenge to the constitutionality of the City’s original Policy. In her Motion, Ms. Hunter Jackson argues that the former Policy was facially unconstitutional because its restrictions on speech directed to individual Council members and on “personal,” “abusive,” and similar remarks discriminated on the basis of viewpoint and lacked objective standards constraining the presiding officer’s discretion. *See* Am. Compl. at 3–7; *see also* Pl. Resp. at 2–7. Defendants do not separately defend the challenged provisions on their constitutional merits. Instead, they argue that the City’s amendment of the Policy’s challenged provisions mooted Count I and that adjudicating the constitutionality of provisions no longer in effect would amount to an advisory opinion. *See* Def. Mot. at 5–8; Def. Reply at 5–9. Ms. Hunter Jackson contends that Defendants’ failure to address the merits of her claim in Count I leaves her facial challenge un rebutted. Pl. Reply at 2–3.

Before turning to the merits of Ms. Hunter Jackson’s claim in Count I, this Court addresses the preliminary arguments asserted by the parties. First, Ms. Hunter Jackson is correct that, generally, a party’s failure to respond to an argument concedes the point made, but, this Court will not grant summary judgment by default. *See* Fed. R. Civ. P. 56(e) advisory committee’s note (2010) (“[S]ummary judgment cannot be granted by default even if there is

a complete failure to respond to the motion.”). And, second, insofar as Defendants’ mootness argument is concerned, Defendants have not carried their burden of demonstrating that the challenge is moot. However, the amendment does affect the relief to which Ms. Hunter Jackson may be entitled. This Court thus addresses the merits of Ms. Hunter Jackson’s facial challenge claim.

The First Amendment, applicable to municipalities through the Fourteenth Amendment, prohibits government entities and actors from “abridging the freedom of speech.” U.S. Const. amend. I; see *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019). Speech criticizing public officials lies at the core of that protection. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270–71 (1964). The First Amendment leaves each person (not the government) to decide which ideas and beliefs deserve expression. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994).

The applicable standard when considering a constitutional challenge to a restraint on speech depends on the forum in which the alleged unconstitutional restrictions are applied. A public-comment period at a municipal meeting is ordinarily a limited public forum. *McDonough v. Garcia*, 116 F.4th 1319, 1328–29 (11th Cir. 2024). In that forum, the City may confine speech to the subjects for which the forum was opened, and such subject-matter restrictions need not be content neutral. But every restriction must be reasonable in light of the forum’s purpose and must be viewpoint neutral. *Id.* at 1329 (quoting *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001)). A restriction discriminates by viewpoint when the speaker’s “specific motivating ideology or the opinion or perspective” supplies the reason for restricting the speech. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829

(1995). Viewpoint discrimination is presumptively unconstitutional. *Honeyfund.com, Inc. v. Governor of Fla.*, 94 F.4th 1272, 1277 (11th Cir. 2024).

A facial challenge, like that asserted in Count I of the Amended Complaint, seeks to invalidate the policy itself rather than only a particular application of the policy. *See Moms for Liberty*, 118 F.4th at 1332–33. A First Amendment facial challenge generally requires a plaintiff to show that “a substantial number of the law’s applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Id.* at 1333 (quoting *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024)). In *Moms for Liberty*, the Eleventh Circuit explained that a limited-public-forum restriction that is incapable of reasoned application because it lacks objective standards and guidance is necessarily facially invalid because that deficiency inheres in the policy itself. *Id.*; *see also Young Israel of Tampa, Inc. v. Hillsborough Area Reg’l Transit Auth.*, 89 F.4th 1337, 1350–51 (11th Cir. 2024). Thus, Ms. Hunter Jackson may prevail on her facial challenge claim in Count I by showing that the challenged terms fail to define key terms, provide objective guidance, or meaningfully constrain the presiding officer’s discretion. *See Moms for Liberty*, 118 F.4th at 1331–35; *Minn. Voters All. v. Mansky*, 585 U.S. 1, 21–23 (2018); *Young Israel*, 89 F.4th at 1347–51.

In Count I, Ms. Hunter Jackson challenges the City’s former Policy’s prohibition on directing remarks to individual Council members and its prohibition on “personal” and “abusive” remarks.

Insofar as her challenge of the direct remarks prohibition is concerned, a reading of the plain text of the Policy’s prohibition of direct remarks to individual Council members reflects that the Policy does not, by its text alone, distinguish between favorable and unfavorable speech. As such, under the Eleventh Circuit’s analysis in *Moms for Liberty*, such a

restriction is not viewpoint discriminatory on its face. *See Moms for Liberty*, 118 F.4th at 1335–36. To the extent the restriction was allegedly inconsistently enforced, such a challenge more properly falls within Ms. Hunter Jackson’s as-applied challenge in Count II.

The former Policy’s undefined prohibitions on “personal” and “abusive” remarks, however, fare differently. As discussed above, it is clear from the face of the Policy, that, is, by its plain terms, that the Policy supplied neither definitions nor objective criteria by which the presiding officer could distinguish permissible from prohibited speech for the purpose of enforcing those prohibitions. And Defendants do not now dispute that the Policy therefore left speakers without objective notice of what was prohibited while vesting the presiding officer with unbounded discretion to decide which criticism was too pointed or harsh to be heard.

In *Moms for Liberty*, the Eleventh Circuit held that undefined restrictions on “abusive” and “personally directed” speech were facially unconstitutional because their text, official interpretation, and enforcement did not supply objective standards and permitted arbitrary or viewpoint-based suppression. 118 F.4th at 1333–35, 1336–38. The Policy here is analogous. Defendants have not identified any objective standard limiting the former Policy’s “personal” and “abusive” provisions. And it is worth noting that the City evinced its recognition of the fact that the former provisions required revision after the decision in *Moms for Liberty*. Compare Policy with Am. Policy at 1 (second WHEREAS clause).

Therefore, based on a reading of the text of the prohibition at issue here, and in light of the fact that the City does not dispute that the “personal” and “abusive” restrictions do not pass Constitutional muster under the Eleventh Circuit’s opinion in *Moms for Liberty*, Ms. Hunter Jackson is entitled to summary judgment as to her claim in Count I that the former

Policy's "personal" and "abusive" restrictions are facially unconstitutional. As discussed above, her Motion is denied as to her claim based on the former direct-address restriction. The issue of damages remains to be determined at trial.

C. Count II - The As-Applied Challenge to the Original Policy.

In Count II, Ms. Hunter Jackson alleges that the City engaged in unconstitutional infringement of her right to free speech based on its application of the original Policy to her. In her Motion, she argues that the City engaged in viewpoint discrimination by stopping her from speaking after she criticized Councilwoman Katrina Wilson by name while permitting other speakers to identify Council members by name without interruption or removal. *See* Pl. Mot. at 7–9. According to Ms. Hunter Jackson, the City stopped her based on the content of her comments directed toward Wilson. She argues that she is entitled to summary judgment on this claim because the relevant, material facts are undisputed. She further contends that the subsequent amendment of the Policy cannot extinguish her claim arising from a completed constitutional injury nor moot her request for damages. *See* Pl. Resp. at 2–4. Defendants do not separately address the merits of the alleged as-applied challenge to the original Policy. Instead, as discussed above, they contend that the amendment of the Policy mooted Ms. Hunter Jackson's requests for declaratory, injunctive, and other prospective relief in Count II. *See* Def. Mot. at 5–8 & n.3; Def. Resp. at 5–9. Ms. Hunter Jackson avers that Defendants' failure to address the merits leaves the as-applied violation unrebutted. *See* Pl. Reply at 2–3.

Initially, as set forth above, this Court will not grant a motion for summary judgment by default, and, therefore, the merits of Ms. Hunter Jackson's claims in Count II are addressed below.

An as-applied challenge asks whether the government constitutionally applied a rule to the particular speaker and speech at issue. It does not require the speaker to establish that the rule is invalid in every application. *See Moms for Liberty*, 118 F.4th at 1331–38. To prevail on her as-applied challenge in Count II, Ms. Hunter Jackson must establish that (1) her speech was protected and fell within the public-comment forum’s purpose; (2) the City restricted that speech; and (3) the restriction was either unreasonable in light of the forum’s purpose or based on her viewpoint expressed in her speech. *See McDonough*, 116 F.4th at 1328–29; *Moms for Liberty*, 118 F.4th at 1335–38. Under this analysis, generally, the City may enforce reasonable rules directed to relevance, time, or genuine disruption. It may not, however, choose to permit what it deems favorable references to named officials while silencing what it views as unfavorable references on the same subject, nor may it invoke an amorphous decorum standard to suppress protected, germane, nondisruptive speech because it views the speech as criticism. *See Rosenberger*, 515 U.S. at 829; *Mansky*, 585 U.S. at 21–23.

Here, the undisputed facts establish that Ms. Hunter Jackson’s criticism of Councilwoman Wilson concerned the conduct of an elected official and fell squarely within the meeting’s public-comment purpose. It is therefore undisputed that her remarks were protected speech within the purpose of the forum, which satisfies the first element of her as-applied challenge. Second, Defendants do not dispute that the City restricted her speech when Mayor Harris instructed Ms. Hunter Jackson to stop and then muted her microphone after she criticized Councilwoman Wilson by name. *See* Def. Resp. SOF ¶¶ 33–34, 39.

Third, the undisputed comparator evidence shows that the restriction, that is, the shutting down of Ms. Hunter Jackson’s speech, was viewpoint-based. As explained in depth above, the video record is clear that other speakers were permitted to identify Council

members by name when praising those Council members, without a warning or instruction to stop. *See* Pl.'s Video Ex. 13; Pl.'s Video Ex. 15; Pl.'s Video Ex. 16; Pl.'s Video Ex. 17; Pl.'s Video Ex. 18; Pl.'s Video Ex. 19; Pl.'s Video Ex. 20 (conventionally filed June 2, 2026, pursuant to Notice of Conventional Filing, ECF No. 66). On the other hand, as also as explained above, the video record clearly shows Ms. Hunter Jackson was stopped from speaking after she identified and criticized Councilwoman Wilson by name. *See* Pl.'s Video Ex. 11 (conventionally filed June 2, 2026, pursuant to Notice of Conventional Filing, ECF No. 66). The distinguishing feature was not the subject, the use of an official's name, or disruptive conduct, but, as the undisputed record evidence shows, it was the unfavorable viewpoint expressed by Ms. Hunter Jackson.

The undersigned acknowledges that Defendants do describe Ms. Hunter Jackson's conduct at the April 9, 2025 Meeting as speaking over the Mayor in a heightened tone and provoking an unsettled audience. *See* Def. Resp. at 2–3. However, the audio and video recording of the Meeting tells a different story. *See* Pl.'s Video Ex. 11 at 0:00–2:06. The video recording shows that before Mayor Harris intervened to stop her speech, Ms. Hunter Jackson used no profanity or threats and engaged in no physical aggression or independently disruptive conduct of any kind. *See* Pl.'s Video Ex. 11 at 0:00–2:06; Deposition of Rodney Harris [ECF No. 59-1 (“Harris Dep.”)] at 93:19–94:18, 133:11–23; Deposition of Richard Robinson [ECF No. 59-2 (“Robinson Dep.”)] at 87:10–22, 88:11–17.

As set forth above, when video evidence clearly depicts the events at issue, courts accept the video's portrayal and view the facts in the light shown by the video. *Baker*, 67 F.4th at 1277–78 (citing *Scott*, 550 U.S. at 381). Thus, where, as here, the video evidence in the record “obviously contradicts” Defendants' description of Ms. Hunter Jackson's conduct at

the Meeting, this Court “accepts the video’s depiction of the events as controlling.” *Pourmoghani-Esfahani*, 625 F.3d at 1315; *Morton*, 707 F.3d at 1284. Therefore, Defendants’ description of Ms. Hunter Jackson’s conduct, which is clearly contradicted by the video evidence, does not create a genuine dispute as to whether there was some viewpoint neutral reason (disruptive conduct) for interrupting and stopping her speech. If anything, Defendants appear to be focused on Ms. Hunter Jackson’s demeanor *after* the Mayor intervened and interrupted her and told her to stop speaking to or about Councilwoman Wilson. *See* Def. Mot. at 12–13. Even if their description of Ms. Hunter Jackson’s conduct after the Mayor interrupted and attempted to stop her from speaking is accurate, that does not create a dispute as to the reason why the Mayor interrupted her in the first place. That is, it is undisputed that the Mayor initially interrupted her based on the content of her speech. If her demeanor changed after that, it has no bearing on whether the City’s application of its Policy to Ms. Hunter Jackson’s speech was content based. The undisputed facts establish that it was.

On the other hand, other video evidence in the record shows that Councilwoman Wilson referred to Ms. Hunter Jackson by name, called her a “big girl,” and accused her of “dirty politics,” in other words, acting in a disruptive manner, so much so that it precipitated a recess at the March 26 meeting, yet the City did not attempt to restrain her speech based on her disruptive behavior. *See* Pl.’s Video Ex. 10 at 6:00–8:06 (the “March 26, 2025 Meeting Video”). Thus, the video recordings demonstrate that the City did not apply its asserted content neutral decorum rationale when it was not troubled by the content of the speech.

In sum, no reasonable jury could view the video evidence and conclude that the City’s enforcement of its Policy against Ms. Hunter Jackson was due to her disruptive conduct and was, therefore, viewpoint neutral or reasonable. To the extent that is the only factual dispute

cited by Defendants in defense of the City's application of its Policy in a content neutral way, the evidence belies that claim, and there is no genuine issue of material fact as to whether the City's application of the Policy to Ms. Hunter Jackson was content-based.

Accordingly, Ms. Hunter Jackson is entitled to summary judgment as to her challenge in Count II of the Amended Complaint to the constitutionality of the City's Policy as applied to her. And, as discussed above, although the City has since amended the Policy, Ms. Hunter Jackson's claim in Count II is not moot because she seeks nominal damages for that completed constitutional injury. The issue of damages remains for determination at trial.

D. Count III – Unlawful Restraint On Speech.

In Count III, Ms. Hunter Jackson asserts a claim against the City and Defendants Harris, Robinson, Richardson, and Jeanty pursuant to 42 U.S.C. § 1983 based on unlawful restraint of free speech. This Court previously dismissed the claim as to Defendants Richardson and Jeanty. *See* Dismissal Order at 16. Therefore, her claim in Count III remains only as to the City and Defendants Harris and Robinson.

1. Municipal Liability For The Claims In Count III.

Initially, this Court observes that although all Defendants request, in their Motion, that the Court enter summary judgment in their favor as to all Counts, the City offers no argument in any of its summary judgment memoranda regarding why the City is entitled to summary judgment as to Count III.

Presumably anticipating that the City would challenge its liability on immunity grounds, Ms. Hunter Jackson argues in her Motion that the City is liable under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), because Mayor Harris possessed final policymaking authority over enforcement of the Policy during City Council meetings and

personally directed the restriction of Ms. Hunter Jackson's speech. *See* Pl. Mot. at 9–13. As Ms. Hunter Jackson points out, Defendants offer no ground for rejecting municipal liability under Count III.

Because the City has not challenged the issue of municipal liability for the claims in Court III and the City has not offered any basis for granting summary judgment in its favor on the claims against it in Count III, there is no basis in the record for granting the City's Motion for Summary Judgment on Count III.

On the other hand, Ms. Hunter Jackson seeks summary judgment against the City as to Count III. *See* Pl. Mot. at 10–12. Therefore, this Court addresses the issue of municipal liability for the purpose of determining whether Ms. Hunter Jackson has established that she is entitled to summary judgment against the City on Count III.

A municipality has no qualified immunity from damages liability arising from its constitutional violations and may not assert its officials' good faith as a defense. *Owen v. City of Independence*, 445 U.S. 622, 657 (1980). However, it may not be held liable under § 1983 merely because it employed a constitutional tortfeasor. *Monell*, 436 U.S. at 690–91. Municipal liability attaches when an official possessing final policymaking authority in the relevant area makes the decision that causes the constitutional injury. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–81 (1986) (“[M]unicipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances.”). Thus, the relevant questions are whether Mayor Harris possessed final policymaking authority over enforcement of the Policy during City Council meetings and whether his exercise of that authority caused the constitutional violation.

The undisputed record establishes that the answer to both questions is “yes”. The City does not dispute that Mayor Harris, as presiding officer, had “final authority” to interpret and enforce the Policy, including the authority to warn, mute, remove, or trespass a speaker. *See* Def. Resp. SOF ¶¶ 14–16. Nor does the City dispute that the presiding officer’s enforcement decisions took effect immediately without prior approval; that the City Council did not overrule or rescind any enforcement decision made at the April 9, 2025 meeting; and that the City treated those decisions as municipal policy unless and until the Council formally overruled them. *See* Def. Resp. SOF ¶¶ 17–18. Based on these undisputed facts, Mayor Harris’s authority was not merely discretionary authority to implement policy formulated elsewhere. Rather, he had final policymaking authority over meeting-time enforcement of the Policy.

It is also undisputed and evident from the video recording that in exercising that authority, Mayor Harris ordered that Ms. Hunter Jackson be stopped from speaking after she named Councilwoman Wilson. *See id.* ¶ 32; Pl.’s Video Ex. 11 at 1:48–1:54. Because that enforcement decision caused the constitutional injury and constituted municipal policy in the relevant area, the City may be held liable under *Monell* based on the Mayor’s conduct.

2. Individual Liability Under Count III.

Mayor Harris and Officer Robinson argue that they are entitled to qualified immunity because they acted within their discretionary authority and no materially similar precedent gave them fair notice that their conduct was unlawful. Def. Mot. at 8–16; Def. Resp. at 9–15. Ms. Hunter Jackson responds that the Eleventh Circuit’s 2024 opinion in *Moms for Liberty* clearly established that officials could not selectively prohibit speakers from naming public officials or enforce an undefined restriction on “abusive” speech, and that Mayor Harris

directed and Officer Robinson subsequently participated in the restraint of her speech in contravention of that established precedent. Pl. Mot. at 9–14; Pl. Resp. at 7–15. Ms. Hunter Jackson further contends that qualified immunity presents an objective inquiry that does not depend on Defendants’ subjective belief that the Policy was constitutional or their professed lack of actual knowledge of the *Moms for Liberty* opinion. Pl. Resp. at 7–15; Pl. Reply at 6–10. In their Reply, Defendants also contend that Ms. Hunter Jackson abandoned her opposition to their claims of qualified immunity by failing to separately discuss every authority cited in their Motion. *See* Def. Reply at 6.

Section 1983 provides a civil cause of action against any person who, acting under color of state law, deprives another of rights secured by the Constitution or federal law. 42 U.S.C. § 1983. Qualified immunity protects a government official from lawsuits alleging that the official violated a plaintiff’s rights but does not preclude suits where officials violated a “clearly established” statutory or constitutional right. *Pearson v. Callahan*, 555 U.S. 223, 231–32 (2009). Importantly, as Ms. Hunter Jackson contends, the determination of whether an official is entitled to qualified immunity is made based on an objective standard. That is, an official’s professed subjective knowledge or belief does not control. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818–19 (1982).

This Court previously addressed the issue of whether the *Moms for Liberty* opinion supplies fair warning that silencing a speaker for naming a councilmember is unlawful in the Order on Defendants’ Motion to Dismiss and held that it does. *See* Dismissal Order at 13–15. The summary judgment record does not unsettle that legal conclusion. As to Mayor Harris, the undisputed evidence establishes that Mayor Harris expressly ordered Ms. Hunter Jackson’s speech stopped after she named Councilwoman Wilson. Mayor Harris testified that

the reason for the interruption, muted microphone, and removal of Ms. Hunter Jackson from the April 9, 2025 Meeting was her repeated use of Councilwoman Wilson's name. *See* Harris Dep. at 109:6–12, 111:8–15. As such, Mayor Harris's conduct falls squarely within the conduct proscribed by the *Moms for Liberty* precedent, and he is not entitled to qualified immunity from liability for the claim in Count III.¹

Moreover, the same undisputed record evidence establishes that Mayor Harris, acting under color of state law, deprived Ms. Hunter Jackson of her Constitutional right to free speech in violation of 42 U.S.C. § 1983. Therefore, Ms. Hunter Jackson is entitled to summary judgment on her claim asserted in Count III against Mayor Harris.

Turning then to Officer Robinson's claim of qualified immunity, this Court finds that disputed facts preclude a determination of whether his conduct violated Ms. Hunter Jackson's rights. There is a genuine, material dispute regarding the context in which Robinson acted. Defendants characterize Robinson as a sergeant-at-arms who was responding ministerially to the presiding officer's command after a speaker repeatedly disregarded instructions and spoke over the Mayor. Ms. Hunter Jackson responds that she was not disruptive, that Robinson understood her only asserted violation was naming Councilwoman Wilson, that Mayor

¹ Insofar as Defendants' argument that Ms. Hunter Jackson abandoned her opposition to their qualified immunity arguments by not addressing every case cited in their Motion, this Court disagrees. Ms. Hunter Jackson squarely addressed qualified immunity and disputed whether Mayor Harris and Officer Robinson violated clearly established law. *See* Pl. Resp. at 7–15. Defendants' reliance on *Jones v. Bank of Am., N.A.*, 564 F. App'x 432, 434 (11th Cir. 2014), is misplaced. *Jones* addresses a party's failure to respond to an argument or claim, but it does not require a party to discuss individually every case cited in support of an argument that the party has opposed. Defendants' abandonment argument therefore supplies no independent basis for summary judgment on either individual Defendant's behalf.

Harris supplied no independent constitutional basis for the command, and that Robinson independently decided to mute the microphone.

That dispute concerns the issue of Robinson's liability for the claim in Count III—specifically, Robinson's personal participation in and causal responsibility for the unconstitutional restraint of Ms. Hunter Jackson's speech. Ms. Hunter Jackson bears the burden of proving Robinson's personal participation and causation. *See Coley-Pearson v. Martin*, 156 F.4th 1133, 1141 (11th Cir. 2025).

And, as to qualified immunity, Robinson bears the initial burden of showing that he acted within his discretionary authority. If he satisfies that burden, Ms. Hunter Jackson must establish that Robinson violated a constitutional right that was clearly established when he acted. *See Skop*, 485 F.3d at 1136–37; *Baxter v. Roberts*, 54 F.4th 1241, 1256 (11th Cir. 2022). As discussed above, this Court has resolved the clearly established prong as a matter of law on the basis of the opinion in *Moms for Liberty*. What remains is the question whether, under the circumstances Robinson objectively confronted, his own act of muting the microphone means that he personally and independently participated in that clearly established violation.

The record reflects that there are genuine disputes that preclude the entry of summary judgment as to Robinson's liability for the claim in Count III or his entitlement to qualified immunity. Based on the disputed evidence, a jury could find that Robinson heard the exchange, understood that the Mayor's command rested on Ms. Hunter Jackson's use of Councilwoman Wilson's name, and independently muted the microphone. On the other hand, a reasonable jury could find that Robinson understood only that the presiding officer had directed a noncompliant speaker to stop and that he acted ministerially without knowing the viewpoint-based basis for the command.

Therefore, neither party has established that they are entitled to summary judgment as to either Mr. Robinson's liability or his entitlement to qualified immunity.

IV. CONCLUSION

In summary, for the reasons set forth above, this Court finds that Ms. Hunter Jackson is entitled to summary judgment as to her claims in Counts I and II in which she claims the City's former public-participation Policy was unconstitutional, both facially and as applied to her. This Court further finds that Ms. Hunter Jackson is entitled to summary judgment on her claims in Count III as to the City and Defendant Mayor Harris. However, her Motion is denied as to Defendant Robinson. And, for the reasons set forth above, the City's Motion for Summary Judgment is denied as to all Counts.

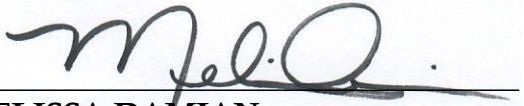
Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Defendants City of Miami Gardens, Rodney Harris, and Richard Robinson's Motion for Summary Judgment **[ECF No. 55]** is **DENIED**.
2. Plaintiff, Karen Hunter Jackson's, Motion for Partial Summary Judgment **[ECF No. 58]** is **GRANTED IN PART AND DENIED IN PART**. That is, the Motion is **GRANTED** as to liability for the claims in Counts I and II and as to liability for the claims against the City and Mayor Harris in Count III, and the Motion is **DENIED** as to the claims against Richard Robinson in Count III.
3. The matter of damages and entitlement to declaratory and injunctive relief and any other issues not resolved by this Order remain for trial or further proceedings.
4. Because Officer Robinson's individual liability, as well as the matters of damages and injunctive relief remain unresolved, this Order does not dispose of all

claims against all parties. This Court will enter a separate final judgment as required by Federal Rule of Civil Procedure 58 after resolution of the remaining claims and issues.

DONE AND ORDERED in Chambers in the Southern District of Florida, this 9th day of October, 2026.


MELISSA DAMIAN
UNITED STATES DISTRICT JUDGE

cc: counsel of record