No. 25-

IN THE

Supreme Court of the United States

BETHLEHEM MANOR VILLAGE, LLC,

Petitioner,

v.

ROBERT J. DONCHEZ, FORMER MAYOR OF THE CITY OF BETHLEHEM, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Multiple Justices have called on this Court to revisit its jurisprudence on qualified immunity. *See N.S., only child of decedent Stokes v. Kansas City Bd. of Police Commissioners*, 143 S. Ct. 2422, 2424 (2023) (Sotomayor, J., dissenting from denial of certiorari); *Baxter v. Bracey*, 140 S. Ct. 1862, 1862 (2020) (Thomas, J., dissenting from denial of certiorari). The panel below granted qualified immunity to Respondent, a mayor who sustained a prolonged campaign to prevent Petitioner from opening a hospital on its property for psychiatric patients simply because the Mayor did not want "those people" in his city. *See* Pet. App. 28–29a.

The questions presented are:

(1) Whether qualified immunity, which conflicts with both the text and history of Section 1983, should be abrogated for Section 1983 claims.

(2) Whether the panel's insistence on prior caselaw involving fundamentally similar facts contravenes this Court's precedents, which hold that officials can be on notice that their conduct violates established law even in novel factual circumstances.

PARTIES

Petitioner Bethlehem Manor Village, LLC, was the plaintiff-appellee in the proceedings below

Respondent Robert J. Donchez, former Mayor of the City of Bethlehem, was the defendant-appellant in the proceedings below.

Respondents City of Bethlehem and City Council of the City of Bethlehem were defendants in the district court and non-participating appellees in the U.S. Court of Appeals for the Third Circuit.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Bethlehem Manor Village, LLC, certifies that it has no parent corporations and no publicly held company owns 10% or more of Petitioner's stock.

LIST OF RELATED PROCEEDINGS

The proceedings in the federal district and appellate courts identified below are directly related to the above captioned case in this Court.

Bethlehem Manor Vill., LLC v. City of Bethlehem et al., No. 5:22-cv-05215-KBH (E.D. Pa. Sept. 30, 2024)

Bethlehem Manor Vill., LLC v. City of Bethlehem et al., No. 24-2925 (3d Cir. Dec. 12, 2025)

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Page

Page

Page

Constitutional Provisions

Statutes and Other Authorities

Page

PETITION FOR WRIT OF CERTIORARI

As Justices of this Court have acknowledged, there are serious problems with modern qualified immunity jurisprudence. One Justice has called on the Court to either "restore some reason to a doctrine that is becoming increasingly unreasonable" or "reexamine its judge-made doctrine of qualified immunity writ large." *N.S., only child of decedent Stokes*, 143 S. Ct. at 2424 (Sotomayor, J., dissenting from denial of certiorari). Another Justice has also called on this Court to "reconsider [its] qualified immunity jurisprudence," which is "no longer grounded in the common-law backdrop against which Congress enacted the 1871 Act," but "instead represent[s] precisely the sort of freewheeling policy choice[s] that [the Court has] previously disclaimed the power to make." *Ziglar v. Abbasi*, 582 U.S. 120, 159–60 (2017) (Thomas, J. concurring) (quotation marks omitted).

This Court should heed those calls. It should cease to apply qualified immunity in Section 1983 cases, since the doctrine is incompatible with both the text and history of Section 1983. Cases before and after Congress enacted Section 1983 rejected a good-faith excuse for constitutional wrongs. And the statute's inclusion of a Notwithstanding Clause—later deleted for simplicity—reinforces the text of Section 1983, which conflicts with the expansive application of qualified immunity in vogue today.

Stare decisis does not bar this Court from correcting a grievous error. Qualified immunity is built on poorly reasoned precedents, which elevate "policy preferences" over statutory text. *See Ziglar*, 582 U.S. at 159–60 (Thomas, J., concurring). And recent research has

revealed that assumptions underlying those policy preferences are incorrect. *See* Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 890, 912–13 (2014) (refuting arguments on the chilling effect of liability with research showing that officers are almost always indemnified by their employers).

Even if this Court does not revisit its qualified immunity jurisprudence, it should still summarily reverse the decision below. That decision directly contravenes this Court's precedent that factually similar precedent is not required to show that a right is clearly established when "a general constitutional rule already identified in the decisional law . . . appl[ies] with obvious clarity to the specific conduct in question." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (citing *United States v. Lanier*, 520 U.S. 259, 270–71 (1997)). The panel's contrary ruling would allow public officials to commit egregious violations of individual rights as long as they do so in allegedly novel circumstances.

This case presents this Court with an excellent vehicle to address issues of vital importance. Qualified immunity is a "one-sided[]" "judge-created doctrine" that "excuses constitutional violations." *Zadeh v. Robinson*, 928 F.3d 457, 480–81 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part). And unlike other doctrines, qualified immunity builds on its own problems. Because "many courts grant immunity without first determining whether the challenged behavior violates the Constitution," public officials can defeat meritorious claims by relying on "judicial silence to conclude there's no equivalent case on the books." *Id.* at 479. This case presents the ideal opportunity for revisiting qualified immunity. This case

does not involve a "police officer who makes a split-second decision to use force in a dangerous setting." *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422 (2021) (statement of Thomas, J., respecting the denial of certiorari). It involves a mayor who sustained a prolonged campaign over several years to block Bethlehem Manor from opening a psychiatric hospital because the mayor did not want psychiatric patients in Bethlehem. *See* Pet. App. 28–29a. Thus, even if qualified immunity properly incorporated a policy decision to prevent public officials from liability for their split-second decisions, that justification would not apply to Respondent's deliberate actions here.

OPINIONS BELOW

The panel opinion of the Third Circuit is not reported but is available at 2025 WL 3562730, and is reproduced in the Appendix beginning at Pet. App. 1a. The district court's opinion is not reported but is available at 2024 WL 4367922, and is reproduced in the Appendix beginning at Pet. App. 7a.

JURISDICTION

The United States Court of Appeals for the Third Circuit entered judgment on December 12, 2025. This Court granted an extension to file the Petition for Certiorari to April 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, as relevant here: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

42 U.S.C. § 1983 provides, as relevant here:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .

STATEMENT OF THE CASE

I. Factual Background

In an effort to provide much-needed mental health services, Petitioner Bethlehem Manor Village, LLC ("Bethlehem Manor") sought to develop a psychiatric hospital on its property in Bethlehem, Pennsylvania. Pet. App. 7a–9a. The area was zoned for a hospital, Pet. App. 8a–9a, and Bethlehem Manor obtained both conditional approval for its project and assurances from the City's zoning officer that a psychiatric hospital was a permitted use.

To keep psychiatric patients out of the city, however, Respondent and then-Mayor Robert Donchez "connived to block [the] new psychiatric hospital." Pet. App. 2a. Mayor Donchez stressed to city officials that he did "not want those people" in his city and pushed city officials to stop the project. Pet. App. 5a. He called a "highly irregular meeting" with city officials that was "far outside the City's normal zoning and land development procedures," and instructed them to "take all steps necessary to prevent the psychiatric hospital from opening." Pet. App. 5a, 28a. The City's zoning officer, who had initially said the hospital was a permitted use, then refused to process Bethlehem Manor's application—stating that she needed more information to assess whether the psychiatric hospital was a hospital. Pet. App. 10a. At Mayor Donchez's direction, the City also revised "local ordinances to prevent construction of the psychiatric hospital." Pet App. 5a.

The City denied Bethlehem Manor's permit application for a psychiatric hospital. Pet. App. 12a. The City's zoning officer, who had originally stated that Bethlehem Manor's psychiatric hospital was a permitted use, now stated that the proposed development was a prohibited use. Pet. App. 9a, 12a. The permit was denied in part because City officials viewed psychiatric patients as a danger to people in the City. Amended Complaint at ¶¶ 67, 76, *Bethlehem Manor Vill., LLC v. City of Bethlehem*, No. CV 22-5215 (E.D. Pa. Sept. 20, 2023), ECF No. 17. Bethlehem Manor later learned that the City's zoning officer would have granted the zoning permit application but for the direction of the Mayor. Pet. App. 5a.

The Commonwealth Court of Pennsylvania reversed the City's permit denial because the City's Zoning Housing

Board, which had affirmed the denial, Pet. App. 12a, "erred in finding that the Proposed Use would not be a hospital use under the [relevant] Ordinance." *Bethlehem Manor Vill., LLC v. Zoning Hearing Bd. of City of Bethlehem*, 251 A.3d 448, 466 (Pa. Commw. Ct. 2021). The Pennsylvania Supreme Court then denied the City's petition for review in 2021, years after Bethlehem Manor initially sought approval to build its hospital. Pet. App. 12a. By then, several psychiatric hospitals had been built or expanded by competitors throughout the area surrounding the City. Amended Complaint at ¶ 82, *Bethlehem Manor Vill., LLC*, No. CV 22-5215, ECF No. 17. Bethlehem Manor lost out on millions of dollars of expected profits, and it was no longer feasible for it to move forward with its plans. Pet. App. 12a.

After several years of hearings and litigation ended, Bethlehem Manor learned from a member of the City's planning and zoning bureau that the obstacles it faced were part of an intentional citywide discriminatory policy by the Mayor and other City officials to exclude psychiatric patients from Bethlehem. Pet. App. 12a–13a.

II. Procedural Background

Bethlehem Manor filed a federal lawsuit against Mayor Donchez under 42 U.S.C. § 1983. As relevant here, Bethlehem Manor claimed that Mayor Donchez violated Bethlehem Manor's substantive due process rights through a "deliberate and discriminatory effort to preclude them from opening up a psychiatric treatment center." Pet. App. 25a, 28a.

In denying the Mayor's motion to dismiss that claim, the district court rejected the Mayor's assertion that he was entitled to qualified immunity. Pet. App. 33a. The district court explained that Bethlehem Manor could overcome qualified immunity at the pleadings stage because it alleged that the Mayor's conduct, undertaken to keep psychiatric patients out of Bethlehem, shocked the conscience. Pet. App. 28a–29a. The absence of a precedent presenting similar facts did not pose a problem for Bethlehem Manor since "the facts of the existing precedent need not perfectly match the circumstances of the dispute in which the question arises." Pet. App. 32a (quoting *Williams v. Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 570 (3d Cir. 2017)).

The Third Circuit reversed.[1] It held that the Mayor was entitled to qualified immunity because neither the district court nor the parties identified a specific decision "from this Circuit finding a due process violation based on similar facts." Pet. App. 3a, 5a. The panel also suggested that the Fourteenth Amendment's protections for property rights are only clearly established in cases involving "'the most egregious official conduct' of 'corruption or self-dealing,' . . . or 'hamper[ing] development in order to interfere with otherwise constitutionally protected activity at the project site, or because of some bias against an ethnic group.'" Pet. App. 6a (quoting *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 285–86 (3d Cir. 2004). Thus, because the panel characterized Bethlehem Manor's years-long delay and

1. The Third Circuit also listed the City of Bethlehem and the City Council of the City of Bethlehem as parties in the decision below. The City Council was dismissed in the district court, and the City of Bethlehem chose not to file briefs as an appellee in the Third Circuit.

multi-million-dollar losses as stemming from a "normal zoning dispute," it reversed the district court and held that the Mayor was entitled to qualified immunity.

REASONS FOR GRANTING THE PETITION

I. The Court Should Reconsider Its Qualified Immunity Jurisprudence

A. Qualified Immunity Is Incompatible With The Text And History Of Section 1983

As Justice Thomas has observed, modern qualified immunity jurisprudence "cannot be located in § 1983's text and may have little basis in history." *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2421 (2021) (statement of Thomas, J., respecting the denial of certiorari) (citing *Baxter v. Bracey*, 140 S. Ct. 1862, 1862–1863, 1863–1864 (2020) (Thomas, J., dissenting from denial of certiorari).

1. Qualified immunity rests on the mistaken assumption that public officers were granted some form of immunity "to shield them from undue interference with their duties and from potentially disabling threats of liability" at common law. *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982). In truth, 19th-century courts routinely allowed damages claims against public officials for constitutional violations—even absent evidence of bad faith.

In *Little v. Barreme*, for instance, this Court held a U.S. Navy captain could be sued for damages for unlawfully seizing a ship even though he did so in good faith under orders from President John Adams. 6 U.S. 170, 176–79 (1804). Then in *Mitchell v. Harmony*, the Court

held a U.S. Army colonel could be liable for damages for unlawfully seizing the goods of an American merchant in good faith during wartime in enemy territory. 54 U.S. 115, 118, 130, 132, 133, 135, 137 (1851). That the colonel—who had thought the merchant was trading with the enemy—was exercising "honest judgment" did not allow him to escape liability. *Id.* at 133, 135. On the contrary, it was for the "political department of government" rather than the court to determine the "protection or indemnity [] due from the public to an officer who, in his zeal for the honor and interest of his country, and in the excitement of military operations, has trespassed on private rights." *Id.* at 135.

The same pattern followed the enactment of Section 1983. In *Poindexter v. Greenhow*, the Court held that a city official acting under a law later declared unconstitutional was personally liable for taking the plaintiff's property. 114 U.S. 270, 273–74, 288, 291, 297 (1885). The ability of courts "to visit penalties upon individual offenders," rather than an unwelcome threat to official conduct, was an indispensable tool for maintaining "individual liberty." *Id.* at 291; *see also Myers v. Anderson*, 238 U.S. 368, 378–79 (1915) (rejecting argument that state officials could not be liable for money damages for applying a statute they thought in good faith was constitutional).

As these cases show, qualified immunity rests on the mistaken premise that "good faith" protected government officials from liability when Congress enacted Section 1983. *See Pierson*, 386 U.S. at 556–57. "[T]here was no well-established, good-faith defense in suits about constitutional violations when Section 1983 was enacted, nor in Section 1983 suits early after its enactment."

William Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45, 55 (2018). Instead, "[w]hen asked to excuse government officials from liability for one reason or another, the Supreme Court uniformly refused—no matter the quality of the excuse." Patrick Jaicomo & Anya Bidwell, *Recalibrating Qualified Immunity*, J. Crim. L. & Criminology 105, 121 (2022).

Rather than continuing to "substitute [its] own policy preferences for the mandates of Congress," this Court should ground its analysis "in the common-law backdrop against which Congress enacted the 1871 Act." *Ziglar*, 582 U.S. at 159–160 (Thomas, J., concurring). Because qualified immunity was not "historically accorded" to public officials facing Section 1983 claims, *Baxter*, 140 S. Ct. at 1863 (Thomas, J., dissenting from denial of certiorari) (quoting *Ziglar*, 582 U.S. at 157 (Thomas, J., concurring), courts should not grant qualified immunity to public officials facing Section 1983 claims today.

2. In any event, the Civil Rights Act of 1871 abrogated any common law immunity defenses that might otherwise exist in Section 1983 claims. Section 1 of the that statute originally included a "notwithstanding clause" which stated that the liability provided for in the statute applied, "any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding." Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13.

The statutory text "directly undermines" modern qualified immunity jurisprudence because it "unambiguous[ly]" shows that Section 1983 did not incorporate "state law immunity doctrine." Alexander Reinert, *Qualified Immunity's Flawed Foundation*, 111

Cal. L. Rev. 201, 236 (2023). As this Court has observed, notwithstanding clauses plainly "signal[] the drafter's intention" to "override conflicting provisions of any other section." *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (citing *Shomberg v. United States*, 348 U.S. 540, 547–548 (1955)).

As relevant here, the Notwithstanding Clause reinforced the text of Section 1983 "against external sources of law that judges might apply to contravene [its] ordinary meaning." Patrick Jaicomo & Daniel Nelson, *Section 1983 (Still) Displaces Qualified Immunity*, 49 Harv. J.L. & Pub. Pol'y 151, 166 (2026). One such source was the common law, which the Civil Rights Act of 1871 referred to as "custom or usage." Reinart, *supra*, at 235 (citing *Cong. Globe*, 42d Cong., 1st Sess., App. 217 (1871)); *see also Hardin v. Lumpkin*, 5 Ga. 452, 453–55 (1848) (relying on a notwithstanding clause that referred to "law, statute, custom, or usage" to reject an effort to limit the statute by applying English common law). All told, the Notwithstanding Clause reinforces the conclusion that the common law could not negate the plain text of Section 1983.

That Congress ultimately condensed Section 1983 with the Notwithstanding Clause removed for the purpose of codification makes no difference. *See* Jaicomo, *Section 1983 (Still) Displaces Qualified Immunity*, *supra*, at 156–57, 211–15. Both the group of revisers that removed this wording when drafting the Revised Statutes of 1874 and Congress understood that removing the Notwithstanding Clause would not substantively change the meaning of Section 1983. *Id.* at 157–58, 159, 211–12, 214–15. As Justice Powell later recounted, "[n]o House member objected to

the revisions" when "the House was 'convened for the sole purpose of detecting language in the revision that changed the meaning of existing law.'" *Id.* at 214 (citing *Chapman v. Hous. Welfare Rts. Org.*, 441 U.S. 600, 639 & n.23 (1979) (Powell, J., concurring)). Regardless, notwithstanding clauses reinforce, rather than alter, the plain text of statutes. And Section 1983 provides that "[e]very person," except "judicial officer[s]" in certain circumstances "shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983. Thus, the absence of the notwithstanding clause does not carry a negative implication that limits the plain text of a statute. *See*, *e.g.*, *Norris v. Crocker*, 54 U.S. 429, 431–32, 439–40 (1851) (statute had displaced contrary law even in absence of a notwithstanding clause).

As Justice Sotomayor explained, recent scholarship on the Notwithstanding Clause "reinforces why, at a minimum, [prosecutorial immunity] should be employed sparingly." *Price v. Montgomery Cnty., Kentucky*, 144 S. Ct. 2499, 2500 n.2 (2024) (Sotomayor, J., statement respecting denial of certiorari). "[T]he Supreme Court's original justification for qualified immunity—that Congress wouldn't have abrogated common-law immunities absent explicit language—is faulty because the 1871 Civil Rights Act *expressly included such language*." *Rogers v. Jarrett*, 63 F.4th 971, 980 (5th Cir. 2023) (Willett, J., concurring) (emphasis in original).

B. Stare Decisis Does Not Bar This Court from Correcting Course

Stare decisis does not bar this Court from correcting course. This Court derives its modern qualified immunity

jurisprudence from its decision in *Harlow v. Fitzgerald*, 457 U.S. 800, 816–18 (1982), which held that executive "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." 457 U.S. 800, 818 (1982). Although *Harlow* involved an implied constitutional cause of action, the Court anticipated it would apply to Section 1983 actions. "[T]he Court extended its holding to § 1983 without pausing to consider the statute's text because" it considered it "'untenable to draw a distinction for purposes of immunity law.'" *Baxter*, 590 U.S. at 1863 (Thomas, J., dissenting from denial of certiorari) (citing *Harlow*, 457 U.S. at 818 n.30). Thus, *Harlow's* reasoning swiftly metastasized to claims under Section 1983. *See Davis v. Scherer*, 468 U.S. 183, 187, 190 (1984). In practice, qualified immunity excuses constitutional violations. *See Zadeh v. Robinson*, 928 F.3d 457, 480–81 (5th Cir. 2019) (Willett, J., concurring in part, dissenting in part). And because damages are sometimes "the only realistic avenue for vindication of constitutional guarantees." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (quoting *Harlow*, 457 U.S. at 814), qualified immunity can render the protections of the Constitution hollow. *See Mullenix v. Luna*, 577 U.S. 7, 26 (2015) (Sotomayor, J., dissenting) (Fourth Amendment).

This Court should overrule *Harlow*. *See Janus v. AFSCME*, 585 U.S. 878, 917 (2018) (considering factors such as the decision's reasoning, workability, developments since the decision was issued, and reliance). ***First***, *Harlow* was poorly reasoned. The Court's decision relied on *Pierson v. Ray*, which looked to legislative history to

determine whether "Congress meant to abolish wholesale all common-law immunities." 386 U.S. 547, 554 (1967). Yet the proper way for courts to interpret a statute is to "start with the statutory text." *Tanzin v. Tanvir*, 592 U.S. 43, 46 (2020) (citation omitted).

This error makes a difference. The version of Section 1983 operative in *Pierson* stated, "[e]very person . . . shall be liable" for rights deprivations without qualifying language. 386 U.S. at 548 n.1 (citing 42 U.S.C. § 1983). The current version of Section 1983 is the same in that regard apart from an exception that applies to judicial officers and injunctive relief. 42 U.S.C. § 1983. Neither version placed any limitation on cases brought against other public officials. As Justice Thomas stressed on multiple occasions, *Harlow*'s clearly established standard "cannot be located in § 1983's text," *Hoggard*, 141 S. Ct. at 2421 (statement of Thomas, J., respecting the denial of certiorari), which "ma[kes] no mention of defenses or immunities" but "[i]nstead . . . applies categorically to the deprivation of constitutional rights under color of state law." *Baxter*, 590 U.S. at 1862–1863 (2020) (Thomas, J., dissenting from denial of certiorari) (citing *Ziglar*, 582 U.S. at 157, (Thomas, J., concurring)).

Second, *Harlow* is unworkable. Jurists have struggled to apply its "clearly established" standard, which "has proved to be [an] impossible [line] to draw with precision." *Janus*, 585 U.S. at 921. This amorphous standard has required this Court's intervention on many occasions. Kit Kinports, *The Supreme Court's Quiet Expansion of Qualified Immunity*, 100 Minn. L. Rev. 62, 63 & nn.6–7 (2016) (noting that, between 2001 and 2015, the Court decided 18 cases addressing whether a particular right

was clearly established). Yet, despite this Court's frequent involvement, the courts of appeals remain intractably divided "over precisely what degree of factual similarity must exist" to find a right "clearly established." *Zadeh*, 928 F.3d at 479 (Willett, J., concurring in part, dissenting in part). And the doctrine's unworkability results in significant harm to individuals suffering constitutional wrongs at the hands of public officials. The doctrine invites courts to "dodge[] . . . precedent by identifying immaterial differences between the facts of cases." *N.S., only child of decedent Stokes v. Kansas City Board of Police Commissioners*, 143 S. Ct. 2422, 2424 (2023) (Sotomayor, J., dissenting from denial of certiorari).

Third, developments since *Harlow* have "eroded the decision's underpinnings." *Janus*, 585 U.S. at 924 (quotation marks omitted). *Harlow* rested on the "unsupported empirical assumption," *id.* (citing *Harris v. Quinn*, 573 U.S. 616, 638 (2014)), that a world without qualified immunity would "dampen the ardor of all but the most resolute, or the most irresponsible public officials, in the unflinching discharge of their duties." *Harlow*, 457 U.S. at 814 (internal brackets omitted) (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949)). Even if it were proper for courts to insert these "freewheeling policy choice[s]" in their analysis, *Ziglar*, 582 U.S. at 159 (Thomas, J., concurring), the assumption undergirding *Harlow* has been thoroughly debunked by subsequent research. As one example, a comprehensive study examining nearly 10,000 civil rights cases from across 44 jurisdictions over a six-year period revealed that indemnification shielded police officers in over 99.5 percent of cases that resulted in payment to the plaintiff. *See* Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U.

L. REV. 885, 890, 912–13 (2014) (officers responsible for only 0.02% of dollars paid). For that reason, public officers can hardly claim any tangible reliance interest. And it is hard to see how the public official who—against all odds—has chosen to accept a position that comes without indemnification can "establish the sort of reliance interest that could outweigh the countervailing interest that" ordinary Americans "share in having their constitutional rights fully protected." *Janus*, 585 U.S. at 927 (citation omitted).

II. At a Minimum, Summary Reversal is Warranted Because the Mayor Violated Bethlehem Manor's Clearly Established Due Process Right

At a minimum, this Court should summarily reverse the decision below, which contravenes this Court's precedent that the existence of "earlier cases involving 'fundamentally similar' facts" is "not necessary" for determining a right is clearly established. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (discussing *United States v. Lanier*, 520 U.S. 259, 269–71 (1997)). Instead, "officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Id.* If it were otherwise, public officials could commit egregious acts with immunity—since "sometimes the most obviously unlawful things happen so rarely that a case on point is itself an unusual thing." *Browder v. City of Albuquerque*, 787 F.3d 1076, 1082 (10th Cir. 2015) (Gorsuch, J.).

Yet the decision below displayed the type of "rigid overreliance on factual similarity" that this Court has counseled against. *Hope*, 536 U.S. at 742. The panel held that the Mayor was entitled to qualified immunity for his

conduct merely because it had not identified a decision from the Third Circuit "finding a due process violation based on similar facts" Pet. App. 5a. *But see D.C. v. Wesby*, 583 U.S. 48, 64 (2018); *Hope*, 536 U.S. at 741 ("Although earlier cases involving fundamentally similar facts can provide especially strong support for a conclusion that the law is clearly established, they are not necessary to such a finding.") (internal quotation marks omitted).

If the panel had followed this Court's instructions that courts should not mechanically grant qualified immunity in novel circumstances, *Hope*, 536 U.S. at 741, it would have found that Petitioner's rights were clearly established. Government can violate a person's substantive due process rights under the Fourteenth Amendment when it commits "an arbitrary and capricious act" that deprives the person "of a protected property interest." *Cnty. Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 165 (3d Cir. 2006) (citation omitted).

A public official's actions in depriving a person of a property interest must "shock the conscience." Conduct "intended to injure in some way unjustifiable by any governmental interest is the sort of official action most likely to rise to the conscience-shocking level." *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (citing *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). Under this standard, the official must evince actual "intent to cause harm" or (where he exercises "unhurried judgment") display deliberate indifference toward a person's rights. *See Sanford v. Stiles*, 456 F.3d 298, 306 (3d Cir. 2006). The Mayor's conduct violated Petitioner's clearly established rights under either standard. Because the Mayor had years to "deliberat[e]" and make "unhurried judgment[s],"

deliberate indifference is all that is required for his behavior to shock the conscience. *Sanford*, 456 F.3d at 306 (citing *Lewis*, 523 U.S. at 849–53). The record reveals that Mayor Donchez went beyond deliberate indifference and "inten[ded] to cause harm" to Bethlehem Manor. *Id.* at 309. Far from a passive participant, Mayor Donchez acted on several occasions to block Bethlehem Manor's psychiatric hospital simply because he did "not want those people" in his city. Pet. App. 5a. He called a "highly irregular meeting" in which he instructed city officials to "take all steps necessary" to block the psychiatric hospital, he influenced the city zoning officer to withhold the relevant permits, and he "prompted revision to local ordinances to prevent construction of the psychiatric hospital." Pet. App. 5a. The panel below did not engage with these egregious facts because it insisted on factually similar caselaw. Pet. App. 5a. This requirement contravenes this Court's precedent. *See Hope*, 536 U.S. at 741. This Court should summarily reverse.

III. This Case Presents an Excellent Vehicle for This Court to Address Issues of Nationwide Importance

This case presents an issue of exceptional nationwide importance. Qualified immunity is a "one-sided[]" "judge-created doctrine" that "excuses constitutional violations." *Zadeh*, 928 F.3d at 480–81 (Willett, J., concurring in part, dissenting in part). Because "[m]eritless claims would already be dismissed on the ground that the alleged facts did not establish that the officials violated a right," the "only role that the clearly established requirement play[s] [is] to preclude suits that . . . have merit." F. Andrew Hessick & Katherine C. Richardson, *Qualified Immunity Laid Bare*, 56 Wake Forest L. Rev. 501, 518 (2021) (citation

omitted); *see also Turning Point USA at Arkansas State Univ. v. Rhodes*, 973 F.3d 868, 879–81 (8th Cir. 2020) (policy restricting speech was unconstitutional as applied to the petitioner but granting qualified immunity nevertheless).

The "clearly established" requirement invites "lower courts to split hairs in distinguishing facts or otherwise defining clearly established law at a low level of generality, which impairs the ability of constitutional torts to deter and remedy official misconduct." *Lombardo v. City of St. Louis, Missouri*, 143 S. Ct. 2419, 2421 (2023) Sotomayor, J., dissenting from denial of certiorari) (citing John C. Jeffries, Jr., *The Liability Rule for Constitutional Torts*, 99 Va. L. Rev. 207, 256 (2013)). And it leads to constitutional stagnation. Because "many courts grant immunity without first determining whether the challenged behavior violates the Constitution," public officials can defeat meritorious claims by relying on "judicial silence to conclude there's no equivalent case on the books." *Zadeh*, 928 F.3d at 479 (Willett, J., concurring in part, dissenting in part) (citing Aaron L. Nielson & Christopher J. Walker, *The New Qualified Immunity*, 89 S. Cal. L. Rev. 1, 12 (2015)).

The Court should revisit qualified immunity, and this is the case to do it. The panel below gave short shrift to Bethlehem Manor's claim because it viewed the case as a "normal zoning dispute" that did not involve "attempts to . . . interfere with otherwise constitutionally protected activity." Pet. App. 6a (internal quotation marks omitted). Yet "the protection of private property is indispensable to the promotion of individual freedom," *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) (citing *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017)), and this Court

has long rejected such a "permissive approach to property rights." *Id.* at 159.

And whatever the merits of qualified immunity as a defense for a "police officer who makes a split-second decision to use force in a dangerous setting," *Hoggard*, 141 S. Ct. at 2422 (statement of Thomas, J., respecting the denial of certiorari), this Court has "never offered a satisfactory explanation" for why the same immunity should apply for public officials "who have time to make calculated choices about enacting or enforcing unconstitutional policies." *Id.* This case illustrates that defect with the Court's "one-size-fits-all test." *Id.* Spurred by a desire to keep psychiatric patients out of Bethlehem, the Mayor "connived" on multiple occasions over many years to block Bethlehem Manor from building a psychiatric hospital. Pet. App. 2a. If there was a case to reconsider qualified immunity, this is it.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED: April 2026

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, FILED DECEMBER 12, 2025

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2925

BETHLEHEM MANOR VILLAGE, LLC

v.

CITY OF BETHLEHEM; CITY COUNCIL OF THE CITY OF BETHLEHEM; ROBERT J. DONCHEZ, FORMER MAYOR OF THE CITY OF BETHLEHEM

ROBERT J. DONCHEZ, FORMER MAYOR OF THE CITY OF BETHLEHEM,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 5:22-cv-05215)
District Judge: Honorable Kelley B. Hodge

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 29, 2025

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges

(Filed: December 12, 2025)

Appendix A

OPINION[*]

MATEY, *Circuit Judge.*

Plaintiff Bethlehem Manor Village ("BMV") is a property developer that alleges public officials in Bethlehem, Pennsylvania connived to block a new psychiatric hospital. Although BMV ultimately obtained approval from a court, it brought this suit under 42 U.S.C. § 1983 against the Mayor, the City Council, and the City.

While partially granting the Mayor's motion to dismiss, the District Court denied his claim for qualified immunity on BMV's constitutional claim, reasoning that "property rights are sufficiently established in the Third Circuit" that "a reasonable person" in the Mayor's position "would have been aware that arbitrary (and potentially discriminatory) deprivation of Plaintiff's property rights is a violation of the Constitution." *Bethlehem Manor Vill., LLC v. City of Bethlehem*, No. CV 22-5215, 2024 WL 4367922, at *11 (E.D. Pa. Sept. 30, 2024) (citing *DeBlasio v. Zoning Bd. of Adjustment*, 53 F.3d 592, 600-01 (3d Cir.

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

1995) and *Blanche Rd. Corp. v. Bensalem Twp.*, 57 F.3d 253 (3d Cir. 1995)).[1]

We disagree because, properly framed, no caselaw "clearly established" the Mayor's alleged conduct as unlawful. While "[t]he text of § 1983 does not provide any immunities from suit," *Fogle v. Sokol*, 957 F.3d 148, 158 (3d Cir. 2020), a government official may avoid section 1983 liability by asserting the affirmative defense of qualified immunity, *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982). Qualified immunity is "an *immunity from suit* rather than a mere defense to liability," so immunity "is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). "[O]fficers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *District of Columbia v. Wesby*, 583 U.S. 48, 62-63 (2018) (citation omitted). Courts may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

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1. The District Court had jurisdiction under 28 U.S.C. § 1331. BMV contends that we lack appellate jurisdiction because the District Court's order, granting in part and denying in part a motion to dismiss, is not a final order. But "[w]hen the defense of qualified immunity is raised and denied, a defendant is generally entitled to an immediate appeal under the collateral order doctrine so long as the denial turns on an issue of law." *De Ritis v. McGarrigle*, 861 F.3d 444, 451 (3d Cir. 2017) (citation omitted).

On this second requirement, "a defendant cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Plumhoff v. Rickard*, 572 U.S. 765, 778-79 (2014). "In other words, 'existing precedent must have placed the statutory or constitutional question' confronted by the official 'beyond debate.'" *Id.* at 779 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). In this Circuit, a right might become "clearly established" only with "binding Supreme Court [or] Third Circuit precedent or from a robust consensus of cases of persuasive authority in the Courts of Appeals." *Minor v. Delaware River & Bay Auth.*, 70 F.4th 168, 174 (3d Cir. 2023) (quoting *Bland v. City of Newark*, 900 F.3d 77, 84 (3d Cir. 2018)).

Framing the question at a sufficient level of specificity is key, and the Supreme Court has "repeatedly told courts . . . not to define clearly established law at a high level of generality." *Plumhoff*, 572 U.S. at 779 (quoting *al-Kidd*, 563 U.S. at 742). Instead, courts must consider clearly established law "in light of the specific context of the case, not as a broad general proposition." *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam)).

Here, the District Court concluded that BMV's allegations, if proven, would show that the Mayor engaged in "arbitrary or irrational decisions" depriving BMV of its "clearly established" due process right "to use or enjoyment of property." *Bethlehem Manor*, 2024 WL

4367922, at *11 (citing *Blanche Rd. Corp.*, 57 F.3d 253 and *DeBlasio*, 53 F.3d at 601). But this "broad general proposition" is divorced from "the specific context of the case" and thus too abstract to give a reasonable official in the Mayor's position proper guidance as to whether his conduct violated BMV's due process rights. *See Mullenix*, 577 U.S. at 12 (citation omitted).

Instead, we must analyze "whether the violative nature of [the Mayor's] *particular* conduct is clearly established" by existing precedent. *See id.* (citation omitted). That requires focusing on BMV's specific allegations that the Mayor: 1) called a "highly irregular" meeting where he "directly instructed" City officials to "take all steps necessary to prevent the psychiatric hospital from opening" because he did "'not want those people [i.e., psychiatric patients] here," App. 39-40; 2) influenced zoning officials who "would have granted [relevant permits] but for the direction by the Mayor," App. 49; and 3) prompted revision to local ordinances to prevent construction of the psychiatric hospital, App. 41-42, 89.

Neither the District Court nor BMV identified any prior decisions from this Circuit finding a due process violation based on similar facts. And, as we have explained, the cases on which the District Court relied "cannot be reconciled" with the Supreme Court's subsequent "explanation of substantive due process analysis" in *County of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998), which specifies "that executive action violates substantive due process only when it shocks the conscience." *United*

Artists Theatre Cir., Inc. v. Twp. of Warrington, 316 F.3d 392, 399-400 (3d Cir. 2003).[2]

The misconduct alleged here in this "normal zoning dispute" does not involve "the most egregious official conduct" of "corruption or self-dealing," a "virtual 'taking,'" or attempts "to hamper development in order to interfere with otherwise constitutionally protected activity at the project site, or because of some bias against an ethnic group." *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 285-86 (3d Cir. 2004) (citation omitted). As a result, our decisions do not "clearly establish" that the Mayor's particular alleged conduct violated BMV's due process rights to develop a psychiatric hospital on its property free from arbitrary zoning decisions that "shock the conscience."

* * *

For these reasons, we will reverse the District Court's denial of the Mayor's motion to dismiss based on qualified immunity and remand with instructions to dismiss BMV's substantive due process claim against the Mayor.

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2. Nor does *Addiction Specialists, Inc. v. Township of Hampton*, 411 F.3d 399, 406-07 (3d Cir. 2005), *abrogated on other grounds by Spring Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013), provide the necessary notice. *Addiction Specialists* held only that a clinic had standing to sue for alleged discrimination against future patients, *id.* at 407, but declined any analysis of immunity, writing: "we of course pass no judgment as to the merits of those claims," *id.* at 408.

APPENDIX B — MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED SEPTEMBER 30, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

CIVIL ACTION NO. 22-5215

BETHLEHEM MANOR VILLAGE, LLC,

Plaintiff,

v.

CITY OF BETHLEHEM *et al.*,

Defendants.

Filed September 30, 2024

MEMORANDUM

Bethlehem Manor Village ("BMV") accuses the City of Bethlehem ("Defendant City"), City Council ("Defendant Council"), and Robert J. Donchez ("Defendant Mayor") (collectively, "City Defendants") of implementing discriminatory policies against psychiatric hospitals by preventing BMV from building a psychiatric hospital on their property located in the City of Bethlehem. BMV alleges due process and equal protection violations pursuant

to 42 U.S.C. § 1983, the United States Constitution, Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq ("ADA") and the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq ("RA"). City Defendants seek to dismiss the claims as time-barred; Defendant City Council and Defendant Mayor seek to dismiss claims for failing to allege that they are separate and distinct legal entities from Defendant City; and Defendant Mayor moves to dismiss BMV's due process and equal protection claims.

I. BACKGROUND[1]

A. Jurisdiction & Venue

Jurisdiction is proper under federal question jurisdiction under 28 U.S.C. §§ 1331, 1343(a), 42 U.S.C. § 12182(a), and 29 U.S.C. § 794(a). Plaintiff's action is brought under 42 U.S.C. § 12101, et seq.; 29 U.S.C. § 794, et seq.; 42 U.S.C. § 1983; and the Fourteenth Amendment of the U.S. Constitution. (ECF No. 17 at 2, ¶¶1, 3.) Venue lies in this judicial district pursuant to 28 U.S.C. § 1391. (ECF No. 17 at 2, ¶2.)

B. Factual Background

BMV owns property in Defendant City zoned for a hospital or similar health facility (ECF No. 17 at 3, ¶¶ 9-11.) Before being amended, the zoning ordinance ("2012 Zoning Ordinance") permitted the development of

1. The Court adopts the pagination supplied by the CM/ECF docketing system.

a hospital defined as "**[a] building(s) which is licensed by the Pennsylvania Department of Health as a [h]ospital, and which involves the diagnosis and treatment of human ailments.**" (ECF No. 17 at 4, ¶16 (emphasis added); ECF No. 17-2 at 2.) BMV filed land development plans for a psychiatric hospital on its property in April 2013 and was granted approval by City's Planning Commission on September 12, 2013 ("2013 Land Development Application") on the condition that BMV (1) shall not operate a treatment center at this site as defined in the 2012 Zoning Ordinance and (2) obtain a determination from the City's Zoning Officer that its proposed use satisfies all provisions of the Zoning Ordinance prior to receiving a building permit. (ECF No. 17 at 4, ¶¶17-19.)

BMV notified the City about a prospective developer for the property in October 2015 and submitted a building site plan to the City's Zoning Officer for approval. (ECF No. 17 at 5, ¶21). The Zoning Officer opined that the proposed psychiatric hospital was a permitted use for the property ("2015 Zoning Opinion"). (ECF No. 17 at 6, ¶¶23-24.) BMV entered a purchase agreement with a prospective developer but faced obstacles in the building permit approval process, despite the 2015 Zoning Opinion. (ECF No. 17 at 5, ¶22.) The developer terminated the agreement with BMV in September 2016. (ECF No. 17 at 7, ¶29.) In February 2017, BMV requested a determination from the Zoning Officer that the proposed psychiatric facility was a permitted "hospital" as defined by the 2012 Zoning Ordinance. (ECF No. 17 at 7, ¶30.) In a meeting after the request for a determination from the Zoning Officer, Defendant Mayor instructed city officials—including the

Zoning Officer and Assistant City Solicitor—to prevent psychiatric hospitals from opening because he "[did] not want those people here." (ECF No. 17 at 7-8, ¶32.) Subsequently, the Zoning Officer requested additional details from BMV before determining whether a proposed psychiatric facility was a "hospital" under the 2012 Zoning Ordinance. (ECF No. 17 at 8, ¶34.) The Zoning Officer then refused to process BMV's request and requested additional information. (ECF No. 17 at 8, ¶¶34-37.) BMV asserts it did not provide the supplemental information because it would have required "significant additional time and resources"—e.g., details on patient arrivals and disclosure of the kinds of medication to be distributed. (ECF No. 17 at 7-8, ¶¶30, 33-36.) Plaintiff alleges City Defendants' refusal was intended to "frustrate and delay" BMV's efforts to develop a psychiatric hospital in the city. (ECF No. 17 at 8, ¶37). BMV filed a new land development application that was accepted by the city on May 2, 2017, but was subsequently rejected for being *incomplete* on June 30, 2017 ("2017 Land Development Application"). (ECF No. 17 at 10, ¶¶43-44.) (emphasis added).

An interoffice memo issued by the Assistant City Solicitor on April 27, 2017, with Defendant Mayor copied, recommended amending the city zoning ordinance to exclude standalone psychiatric hospitals as a permitted use, under which the pending ordinance doctrine would allow the administration to deny BMV's permit application. (ECF No. 17 at 9, ¶¶38-41.) City Defendants rejected the 2017 Land Development Application and adopted the amended zoning ordinance ("2017 Zoning Ordinance") on

July 6, 2017. According to the amended zoning ordinance, the definition of a hospital was narrowed to:

> "[a] building(s) which is licensed by the Pennsylvania Department of Health as a Hospital, and which involves the diagnosis and treatment of human ailments, **and which may include behavioral health facilities and psychiatric hospitals operated in accordance with all laws and regulations, provided the behavioral health facilities occupy no more than 25% of the floor space of the hospital facilities directly associated with the diagnosis, care, treatment, and sleeping facilities of patients"**

Bethlehem, Pennsylvania, Zoning Ordinance § 1302.56; (ECF No. 17 at 10, ¶¶45-46) (emphasis added). BMV notified City Defendants that it believed they were without authority to refuse to process the land development application that they had submitted in 2017 before the prohibitive amendment. (ECF No. 17 at 11-12, ¶¶49-53.) The City's planning commission discussed the 2017 Land Development Application at a meeting in January 2018. (ECF No. 17 at 12, ¶54.) BMV alleges it did not receive written notice of the meeting and did not become aware of the meeting until a few days prior. (*Id.*) BMV requested a continuance under 53 Pa. Con. Stat. § 10508(3) which the commission denied. BMV's 2017 Land Development Application was also denied by the commission. (ECF No. 17 at 12, ¶56.) BMV appealed the denial of the 2017 Land Development Application to the

Northampton County Court of Common Pleas asserting the City acted in bad faith and the denial was part of City Defendant's ongoing effort to prevent BMV from developing a psychiatric hospital on its property. (ECF No. 17 at 12, ¶57.)

On July 11, 2018, BMV submitted a zoning permit application ("2018 Zoning Permit Application") to the Zoning Officer. On July 20, 2018, the Zoning Officer denied BMV's application because the proposed psychiatric facility was a "treatment center" under the 2012 Zoning Ordinance, thus a prohibited use. (ECF No. 17 at 5, 10-11, 14-15, ¶¶19(c), 46, 47, 66-68, 72.) The permit denial was affirmed by the City's Zoning Housing Board and the Northampton County Court of Common Pleas but was reversed by the Commonwealth Court of Pennsylvania on April 8, 2021. *See Bethlehem Manor Vill., LLC* v. *Zoning Hearing Bd.*, 251 A.3d 448, 450 (Pa. Commw. Ct. 2021) (holding BMV's proposed use was permitted use under the 2012 Zoning Ordinance); *Bethlehem Manor Vill. LLC* v. *Zoning Hearing Bd.*, 260 A.3d 922 (Pa. 2021) (denying City Defendants petition for appeal); (ECF No. 17 at 15-16, ¶¶73, 77-79.)

In July 2022, during a meeting with an unidentified member of Defendant City's Planning and Zoning Bureau, BMV alleges it learned that the challenges in developing a psychiatric hospital were part of an *intentional* city-wide discriminatory policy implemented by City Defendants to exclude psychiatric patients. (ECF No. 17 at 20, ¶¶85-86.) Had the facility been approved, BMV alleges it expected to profit $2.5 million annually (ECF No. 17 at 21, ¶93.)

BMV asserts upon receiving this information, the City Defendants engaged in alleged discriminatory conduct as stated in the Amended Complaint. This conduct was carried out by the City Defendants in their official capacities—additionally, BMV brings this action against the Defendant Mayor in his individual capacity (ECF No. 17 at 21-22, ¶¶94-95.)

C. Procedural History

Before the court is City Defendants' Motions to Dismiss ("MTD") BMV's Amended Complaint (ECF Nos. 21-22.) BMV filed its initial complaint on Dec. 29, 2022. (ECF No. 1.) Defendant City Council and Defendant City filed their MTD on Mar. 6, 2023, which was denied as moot on Mar. 24, 2023, due to Plaintiff's Amended Complaint being filed on Mar. 21, 2023. (*See* ECF Nos. 15, 17, 20, 21.) City Defendants filed a MTD as to the Amended Complaint on Mar. 31, 2023, and said Motion is before the court now. (*See* ECF Nos. 21-22.)

II. LEGAL STANDARD

To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft* v. *Iqbal*, 566 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.* v. *Tombly*, 550 U.S. 544, 570 (2007)). A claim is plausible when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

In deciding whether a complaint fails to state a claim upon which relief can be granted, the court is required to accept as true all factual allegations in the complaint as well as all reasonable inferences that can be drawn from the complaint. *Jordan* v. *Fox Rothschild, O'Brien & Frankel, Inc.*, 20 F.3d 1250, 1261 (3d Cir. 1994). These allegations and inferences are to be construed in the light most favorable to the plaintiff. *Id.* But, the court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." *Morse* v. *Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997). Plaintiffs cannot prove facts they have not alleged. *Associated Gen. Contractors of Cal.* v. *Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). Thus, "a pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." *Ashcroft*, 556 U.S. at 678. Rather, a complaint must recite factual allegations enough to raise the plaintiff's claimed right to relief beyond the level of mere speculation. *Id.*

III. DISCUSSION

A. BMV's Claims Against City Defendants are Not Time Barred

The statute of limitations for claims brought in the Eastern District of Pennsylvania under § 1983, the ADA, and the RA are governed by Pennsylvania's two-year statute of limitations for personal injury claims. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007) (holding the length of the statute of limitations for § 1983 claims is that

which the State provides for personal-injury torts); *Kost v. Kozakiewicz*, 1 F.3d 176, 189-90 (3d Cir. 1993) (applying Pennsylvania's statute of limitations for personal injury claims for § 1983 relief); *Disabled in Action of Pa. v. Se. Pa. Transp. Auth.*, 539 F.3d 199, 208 (3d Cir. 2008) (both ADA and Rehabilitation Act should follow the statute of limitations for the applicable state statute's personal injury actions) (citing *North Star Steel Co. v. Thomas*, 515 U.S. 29 (1995)); Pa. Cons. Stat. § 5524(2) (claims for personal injury must be commenced within two years).

A claim accrues when the plaintiff knew or should have known of the injury upon which its claim for relief is based, even if the full extent of the injury is not then known or predictable. *Germantown Cab Co.* v. *Phila. Parking Auth.*, 2018 WL 3141347, at *4 (E.D. Pa. 2018) (quoting *Sameric Corp. of Del.* v. *City of Phila.*, 142 F.3d 582, 599 (3d Cir. 1998)). When a federal court borrows a state's statute of limitations, tolling principles in the state also apply. *Kach* v. *Hose*, 589 F.3d 626, 639 (3d Cir. 2009).

The parties do not dispute the statute of limitations for BMV's claims is two years. (ECF No. 21 at 14; ECF No. 23 at 10; ECF No. 24 at 9.) They differ on when the claims accrued and whether the claims were tolled. Plaintiff argues that their claims are tolled by the discovery rule or, in the alternative, the continuing violation doctrine. City Defendants argue that those exceptions do not apply.

Appendix B

1. The Discovery Doctrine Does Not Toll the Statute of Limitations

In Pennsylvania, the discovery doctrine allows a statute of limitations to be tolled where a plaintiff "neither knows nor reasonably should have known of his injury and its cause at [the] time his right to institute suit arises." *Fine v. Checcio*, 582 Pa. 253, 269 (Pa. 2005); *Knopick* v. *Connelly*, 639 F.3d 600, 607 (3d Cir. 2011). When applying the discovery rule, the accrual date is not postponed simply because the injured party is unaware of every fact required to file their claim. *Byrd* v. *Mangold*, 2019 WL 5566752, at *4 (E.D. Pa. 2019) (quoting *Zeleznik* v. *United States*, 770 F.2d 20, 23 (3d Cir. 1985)). Instead, the court must determine whether the party had sufficient notice of their injury such to require them to investigate and make a timely claim for relief. *See id.* Once an injured party is put on notice, they have the burden of identifying—within the statutory period—what claims they have and against whom. *Id.* A party seeking to invoke the discovery doctrine must establish their inability to know the injury despite reasonable diligence, i.e., what a similarly situated reasonable plaintiff would have done to investigate their claims. *Sampathkumar* v. *Chase Home Fin., LLC*, 241 A.3d 1122, 1145 (Pa. 2020).

City Defendants argue the discovery rule does not apply because BMV was aware of the alleged conduct when the city amended the zoning ordinance in 2017 and when their second building permit was denied in June 2018. (ECF No. 21 at 8-9; *see* ECF No. 17 at 20, ¶¶85-86.) Defendant Mayor further argues that BMV had the

opportunity to and should have conducted pre-complaint discovery or pursue Right-To-Know requests to ascertain its claims and failed to do so. (ECF No. 25 at 9.)

BMV argues it did not know and could not have reasonably known about City Defendant's "intentional, decade-long effort . . . to keep psychiatric patients out of the City, rather than a mere erroneous zoning decision or series of actions in the normal course of City business" until a member of the City's Bureau of Planning and Zoning revealed those facts in July 2022. (ECF No. 17 at 20, ¶¶85-86; ECF No. 23 at 16; ECF No. 24 at 15-16, 19.) BMV did not allege during any of these time periods that the Defendant City denied their application for the purpose of discriminating against BMV because of their affiliation with individuals protected by the ADA. Thus, BMV was not on notice of their *discrimination* claims against City Defendant until July 2022. BMV alleges they discovered an intentional City-wide policy implemented by City Defendants to exclude psychiatric patients after meeting with an unnamed informant in July 2022. (ECF No. 17 at 20, ¶¶85-86.) BMV argues a Right-to-Know Request would not gather information about the circumstances surrounding City Defendant's discriminatory policies because they were "tightly held" secrets kept from the public. (ECF No. 17 at 20, ¶87; ECF No. 23 at 17.)

While the Court recognizes that Plaintiff did not discover that their potential injury occurred as a result of discrimination until 2022, the discovery rule only delays accrual of the statute of limitations period until

the plaintiff discovers that they have been *injured*, not upon awareness that the injury constituted a particular legal wrong. *Harper* v. *Court of Common Pleas*, 2000 WL 688169, at *2 (E.D. Pa. 2000). Awareness of injury, not *legal* injury, is the key factor in determining when the statutory period begins. Thus, BMV's claims are not tolled by its discovery that City Defendant's conduct was motivated by animus because its actual injury was apparent, at the latest, in February 2019 when Plaintiff's most recent zoning request was denied. (ECF No. 21 at 14.)

2. The Continuing Violation Doctrine Tolls the Statute of Limitations.

The continuing violations doctrine is an "equitable exception to the timely filing requirement." *Cowell* v. *Palmer Twp.*, 263 F.3d 286, 292 (3d Cir. 2001). There are two kinds of continuing violations: serial violations and systemic violations. "A serial violation is composed of a number of discriminatory acts emanating from the same discriminatory animus, each act constituting a separate wrong." *Saylor* v. *Ridge*, 989 F. Supp. 680, 686 (E.D. Pa. 1998) (citation omitted). A systemic violation, on the other hand, "need not involve an identifiable discrete act of discrimination transpiring within the limitations period, but rather has its roots in a discriminatory policy or practice." *Id.* "So long as the policy or practice itself continues into the limitations period, a challenger may be deemed to have filed a timely complaint." *Id.* Plaintiff argues that this matter falls under the "systematic violation" category.

Appendix B

Defendant Mayor argues BMV's claim of ongoing discrimination does not toll the statute of limitations because claims expire two years after the discriminatory policy ends. (ECF No. 25 at 1.) The denial of BMV's application was made manifest in 2019 and there remained no outstanding applications or requests which would support tolling. (ECF No. 25 at 3.) Defendant Mayor argues the continued inability of BMV to obtain zoning relief after its final application was rejected in 2019 does not constitute a continuing discriminatory violation. Defendant argues that BMV's allegations—a single isolated permit denial and that no psychiatric hospitals currently exist within city limits—fail to demonstrate an "over-arching policy of discrimination" which might constitute a "continuing violation." (ECF No. 25 at 6.)

BMV argues the systemic continuing violation doctrine applies because City Defendant's conduct amounts to a systemic continuing violation—i.e., an "established pattern" and "over-arching policy" of discrimination against psychiatric patients by City Defendants starting with the adoption of the 2012 Zoning Ordinance. (ECF No. 23 at 13; ECF No. 24 at 11.) BMV asserts that these continuing violations, as it relates to them, continued with the (1) refusal to grant an extension for the Planning Commission to act on the 2017 Application, and (2) denial of the 2017 Application rather than providing BMV with an opportunity to respond to the Commission's outstanding review comments. (ECF No. 23 at 21; *see* ECF No. 17-12 at 9-10, ¶¶29(A)-(F).) BMV alleges that City Defendants' conduct constitutes a systemic continuing violation because City Defendants have implemented discriminatory policies

over the last decade that continue today indicating ongoing harm rather than an isolated event. (ECF No. 28 at 2-3.) These discriminatory policies are evidenced by explicit statements by Defendant Mayor that he did not "want those people here—" referencing BMV's patients—and the exercise of authority over various individuals within the City Council, resulting in revisions to an ordinance which made it more difficult for, not only Plaintiff, but for other potential individuals to open psychiatric hospitals and/or treatment centers. (ECF No. 17 at 17, ¶¶84(a)-(c).) "The Administration specifically request[ed] City Council to immediately enact the attached resolution to declare this proposed amendment as a 'pending ordinance' under the judge-created 'pending ordinance doctrine.'" (ECF No. 17 at 9, ¶40.) This allowed the Administration to deny [BMV's] permit application . . . if the pending zoning amendment would prohibit the use for which the permit is sought." (*Id.*) This was to conform the 2017 Zoning Amendment in line with "community interest[s] [that have] surfaced in steering the placement of hospitals and hospital-styled uses within the City of Bethlehem in more refined ways than recognized in the City Zoning Ordinance." (ECF No. 17-7 at 3.)

Taking BMV's allegations as true, the pattern of conduct and the treatment of Plaintiff's zoning application along with the overt and active effort to prevent a psychiatric treatment center from opening within the City of Bethlehem provides enough basis, at the motion to dismiss stage, to conclude that Plaintiff has sufficiently pled systemic continuing violations of the law and therefore Plaintiff's complaint is timely under the systemic violation doctrine.

B. Defendant City Council is Not a Separate and Distinct Legal Entity from Defendant City of Bethlehem.

A governmental entity may be sued in federal court in accordance with governing state law. *See* Fed. R. Civ. P. 17(b)(3). "[A]lthough a municipal corporation and the individual members of its city council may have capacity to sue and be sued, the council itself may not be a legal entity for purposes of Rule 17(b)." Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1562 (3d ed. 1998). There appears to be a dearth of precedent surrounding this legal concept within the Third Circuit. However, as other circuits have addressed this issue on more than one occasion, this Court will take guidance from those circuits.

In the Sixth Circuit, a local government's subdivisions are not separate from municipal corporations from which they derive authority, thus they generally cannot be sued as separate legal entities. *See Tysinger* v. *Police Dep't of City of Zanesville*, 463 F.3d 569, 572 (6th Cir. 2006) (police department, as a part of the city, should not have been named as the defendant); *see Matthews* v. *Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994) (county government was the appropriate defendant to address plaintiff's § 1983 claims as opposed to the city's police department); *Mayers* v. *Williams*, 2017 WL 4857567 (6th Cir. 2017) (affirming district court's dismissal of § 1983 claims against county's drug task force); *see Crutcher* v. *Ct. Psychiatric Clinic*, 2017 WL 5514812 (6th Cir. 2017) (affirming district court's dismissal of claims against city's law department).

The same rings true in the Seventh Circuit. *See generally Bonilla* v. *City Council of City of Chicago*, 809 F. Supp. 590, 600-01 (N.D. Ill. 1992) (absent specific statutory authority, a city council is not a suable entity for purposes of challenging City of Chicago's remapping of wards)*; see* e.g., *Dr. Martin Luther King, Jr. Movement, Inc.* v. *City of Chicago*, 435 F. Supp. 1289, 1294 (N.D. Ill. 1977) (finding that City of Chicago Department of Streets and Sanitation was not a suable entity because it is merely an organizational division of City and thus without independent legal status).

In the Fifth Circuit, a subdivision must "enjoy a separate legal existence,—" i.e., it must be a "separate and distinct corporate entity—" in order to sue or be sued separately from its parent government entity. *Darby* v. *Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991); *see also Kirby Lumber Corp.* v. *State of La. through Anacoco-Prairie State Game and Fish Comm'n*, 293 F.2d 82, 83 (5th Cir. 1961) (holding that a political subdivision cannot pursue a suit on its own unless it is "a separate and distinct corporate entity"). As a result, unless a city has "taken explicit steps . . . to grant [independent legal] authority to the subdivision, the subdivision cannot engage in any litigation except in concert with the city itself. *Darby*, 939 F.2d at 313; *see also Thomas-Melton* v. *Dall. Cnty. Sheriff's Dep't*, 39 F.3d 320 (5th Cir. 1994) (indicating that even if the county were added as a defendant, the plaintiff would still need to show that a county subdivision was an entity amenable to suit in order to engage in litigation in concert with the government).

Appendix B

Defendant City Council argues the court "must" dismiss the City Council as a defendant because it is the same legal entity as Defendant City. (ECF No. 21 at 1.) BMV fails to allege facts sufficient to establish "an independent basis [of] liability" for Defendant City Council. (ECF No. 21 at 1; ECF No. 17 at 2, ¶¶6-7.) Specifically, the Amended Complaint lists the Defendant City Council as: "City Council of the City of Bethlehem is the governing body of the City, which operates on a mayor-council form of government." *Id.* Plaintiff lists the same addresses for Defendant City Council and Defendant City. *Id.*

BMV argues Defendant City Council's conduct—amending the zoning ordinance in 2012 and again in 2017—constitutes independent discriminatory acts which harmed and continues to harm BMV and its prospective patients. (ECF No. 23 at 22.) Thus, BMV's claims against Defendant City Council are separate and distinct from Defendant City. (*Id.*)

"[Bethlehem] City Council is the legislative body of Bethlehem city government." Overview, City of Bethlehem, www.bethlehem-pa.gov (last visited on Oct. 1, 2024). City Council has authority over "[a]ll matters relating to . . . code violations, . . . Planning, Zoning, Housing Rehabilitation, Inspections, Economic Development, . . . and Redevelopment Authority issues" of the City of Bethlehem, among a host of other things. City Council of Bethlehem Res. No. 2011-214 (2017). Defendant City and Defendant City Council are the same legal entity because Defendant City Council is the group of *live* individuals that exert the authority of a *fictitious* legal entity, Defendant

City. *See generally* Bethlehem, Pennsylvania, Zoning Ordinance § 1714.08. As a result, the Court concludes that because the City Council is an operating arm of the City itself, it must be treated as the same legal entity.

C. Defendant Mayor is Not Dismissed due to Redundancy of Claims between Defendant Mayor and City Defendant.

Defendant Mayor argues that Plaintiff's § 1983 claims are redundant because claims against "individual defendants in their official capacities are equivalent to claims against the governmental entity itself." (ECF No. 22 at 17.) Plaintiff does not dispute that claims brought against Defendant Mayor in his official capacity are identical claims to those brought against Defendant City. (ECF No. 24 at 22.) Plaintiffs further allege that, without having conducted discovery, discerning which claims are distinct or which claims are identical is not possible.

While the Court recognizes that claims against an individual in their official capacity and claims against the governmental entity are redundant, the Court also recognizes that dismissal of Defendant Mayor in his official capacity would "serve no laudable purpose." *Capresecco v. Jenkintown Borough*, 261 F. Supp. 319, 322 (E.D. Pa. 2003). Whereas in *Capresecco*, the defendant did not argue that the allegations against them failed to state a cognizable claim under § 1983, redundancy of claims between the official and their office is not a "persuasive basis for dismissal under Rule 12(b)(6)." *Id.* The Court finds the same here. "[T]his formalistic approach . . . does

not correspond to standard § 1983 practice . . . [M]ultiple defendants, whether corporate, municipal, or individual, are commonplace in leading § 1983 actions." *Id.* (citing *Coffman v. Wilson Police Dep't*, 739 F. Supp. 257 (E.D. Pa. 1990); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986)). Furthermore, Defendant Mayor must also answer charges against him in their individual capacity, "and so dismissing the official capacity claims against them will serve no laudable purpose." *Id.* This resolution is also reflective of the fact that discovery has not been commenced and Plaintiff has alleged that once discovery has been completed, there may be more clarity as to what claims are distinct and what claims are identical between Defendant City and Defendant Mayor.

D. Claims Against Defendant Mayor in his Individual Capacity

An individual-capacity suit under 42 U.S.C. § 1983 "alleges wrongful conduct taken under the color of state law and seeks relief from the defendant personally." *Whaumbush v. City of Phila*, 747 F. Supp. 2d 505, 514 (E.D. Pa. 2010). In order to incur individual liability, the defendant must be personally involved in the alleged wrong. *Id.* This involvement may be allegations of "personal direction or actual knowledge and acquiescence." *Id.* In the present case, Plaintiff alleges that Defendant Mayor engaged in conduct that deprived them of their Fourteenth Amendment Procedural and Substantive Due Process rights and Equal Protection rights.

Appendix B

i. Procedural Due Process

No state shall "deprive any person of life, liberty or property without due process of law." U.S. Const. Amend. XIV. There are two rights that a plaintiff may assert have been violated under the Fourteenth Amendment Due Process Clause: procedural due process and substantive due process rights.

"[A] state may not authorize the deprivation of a protected liberty or property interest without providing a procedure in connection with that deprivation that meets the requirements of due process." *Sample* v. *Diecks*, 885 F.2d 1099, 1114 (3d Cir. 1989). "To state a claim under § 1983 for deprivation of procedural due process rights, a plaintiff must allege that (1) [they] were deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of life, liberty, or property, and (2) the procedures available to [them] did not provide due process of law." *King* v. *City of Phila.*, 654 F. App'x 107, 111 (3d Cir. 2016) (quoting *Hill* v. *Borough of Kutztown*, 455 F.3d 225, 233-34 (3d Cir. 2006)). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews* v. *Eldridge*, 424 U.S. 319, 333 (1976); *see also Kadakia* v. *Rutgers*, 633 F. App'x 83, 88 (3d Cir. 2015).

In the present case, Plaintiff does not specifically allege facts that would support a procedural due process claim in their complaint, nor does Plaintiff address procedural due process in either of their Briefs in Opposition to City

Defendants' Motions. (ECF Nos. 23-24, 28.) As a result, to the extent that this claim did exist, it is dismissed as being unsupported. *See Warren v. Luzerne Cnty.*, 2010 WL 521130, at *6 (W.D. Pa. 2010) (dismissing plaintiff's claim of equal protection where they failed to allege facts sufficient to support that claim in their complaint and in their brief in opposition to defendant's motion to dismiss).

ii. Substantive Due Process

"Substantive due process is a component of the [Fourteenth Amendment] that protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them." *Newark Cab Ass'n* v. *City of Newark*, 901 F.3d 146, 155 (3d Cir. 2018) (quoting *Collins* v. *City of Harker Heights*, 503 U.S. 115, 125 (1992)). To establish a "non-legislative substantive due process claim," the plaintiff must have been deprived of a fundamental protected property or liberty interest. *Newark Cab*, 901 F.3d at 155. To establish a substantive due process claim, a plaintiff must prove the particular interest at issue is protected by the substantive due process clause and the government's deprivation of that protected interest shocks the conscience. *Steele v. Cicchi*, 855 F.3d 494, 502 (3d Cir. 2017). What constitutes a shocking of the conscience depends on the circumstances of the particular case and ranges from deliberate indifference to actual intent to cause harm. *Id.* (citing *Vargas v. City of Phila.*, 783 F.3d 692, 973 (3d Cir. 2015)). BMV is asserting that Defendant Mayor deprived it of a protected property interest in developing a psychiatric hospital for profit.

Appendix B

Only property interests of a "particular quality" are worthy of substantive due process claims under the Constitution. *Selig v. N. Whitehall Twp. Zoning Hearing Bd.*, 653 F'Appx. 155, 157 (3d Cir. 2016). A plaintiff, as a matter of law, establishes a property interest protected by the Fourteenth Amendment when they show "arbitrary governmental actions impinged upon its intended use of property." *Cornell Co., Inc. v. Borough of New Morgan*, 512 F. Supp. 2d 238, 261 (E. D Pa. 2007); *see also DeBlasio v. Zoning Bd. of Adjustment for Twp. Of W. Amwell*, 53 F.3d 592, 600-01 (3d Cir. 1995) ("[I]n the context of land use regulation, that is, in situations where the governmental decision in question impinges upon a landowner's use and enjoyment of property, a land-owning plaintiff states a substantive due process claim where he or she alleges that the decision limited the intended land use was arbitrarily or irrationally reached.") (abrogated on other grounds). Plaintiff alleges that there was a deliberate and discriminatory effort to preclude them from opening up a psychiatric treatment center. This would fall into the category of protected property interests sufficient to state a claim of substantive due process violation.

The next step of the analysis is whether such a decision "shocks the conscience." Plaintiff alleges that Defendant Mayor called a highly irregular meeting, far outside the City's normal zoning and land development procedures and gave specific direction to City officials to keep psychiatric patients out of the city. (ECF No. 17 at 7-8, ¶¶31-32.) BMV argues Defendant Mayor's conduct was and continues to be "so egregious and tainted by improper motive that it shocks the conscious" as he "continues to

portray patients of psychiatric hospital[s] as a danger to . . . the city." (ECF No. 24 at 24.) Furthermore, Defendant Mayor explicitly stated he wanted to exclude "those people" from entering the city. (*Id.*) The Court finds, at this stage, this is sufficient to shock the conscience as to Plaintiff's deprivation of property rights. Courts have allowed substantive due process claims to survive the motion to dismiss stage on less. *Cornell.*, 512 F. Supp. 2d at n. 14 (holding that "in the absence of a fully developed factual record and under the obligation to draw all reasonable inferences in [plaintiff]'s favor, [the Court] cannot hold that it appears beyond doubt that plaintiff can prove no set of facts that would prove the existence of conscious-shocking behavior by defendants.").

Finally, the Court must determine whether Defendant Mayor, as an individual acting under color of law, has had personal involvement in the alleged wrongdoing. Such personal involvement can be shown "through allegations of personal direction" in violation of a plaintiff's constitutional rights. *Rode*, 845 F.2d at 1207. A defendant may be liable if, with deliberate indifference to the consequences, they "established and maintained a policy, practice or custom which directly caused the constitutional harm." *Plouffe* v. *Cevallos*, 2012 WL 1994785, at *4 (E.D. Pa. 2012) (citing *Santiago* v. *Warminster Twp.*, 629 F.3d 121, 129 n.5 (3d Cir. 2010)). Liability may also attach if the defendant "participated in violating the plaintiff's rights [or] directed others to violate them." *Id.* Thus, a plaintiff must plead that a government-official defendant, through the official's own individual actions, has violated the Constitution. *Id.* (citing *Iqbal*, 556 U.S. at 676). Plaintiff

has pled sufficient facts to show that Defendant Mayor had personal involvement in the wrongdoing. In fact, there is sufficient factual information to show, at this stage in the litigation, that Defendant Mayor led the wrongdoing, including calling a special meeting, suggesting a revised ordinance, exercising authority over other City Council employees, and explicitly stating he did not want "those people" here. There are sufficient facts pled for Plaintiff to pursue individual liability against Defendant Mayor.

E. Equal Protection

In the present case, just as with their procedural due process claims, Plaintiff does not specifically allege facts that would support an equal protection claims in their complaint, nor does Plaintiff address equal protection in either of their Briefs in Opposition to City Defendants' Motions. (ECF Nos. 23-24, 28.) As a result, to the extent that this claim did exist, it is dismissed without prejudice. *See Warren v. Luzerne Cnty.*, 2010 WL 521130, at *6 (W.D. Pa. 2010) (dismissing plaintiff's claim of equal protection where they failed to allege facts sufficient to support that claim in their complaint and in their brief in opposition to defendant's motion to dismiss).

F. Defendant Mayor is Not Entitled to Qualified Immunity

Defendant Mayor argues he is entitled to qualified immunity because the property interest asserted in the substantive due process claim alleged by Plaintiff is not so "clearly established" as to prevent him from otherwise

being entitled to qualified immunity for a discretionary function of his job, i.e., rejecting BMV's zoning application. (ECF No. 25 at 10.) Thus, Defendant Mayor argues that he did not knowingly violate any clearly established right of BMV. (*Id.*)

BMV argues Defendant Mayor is not entitled to a defense of qualified immunity because he reasonably understood that his conduct violated BMV's and its patient's established constitutional rights. (ECF No. 24 at 24.) BMV alleges "it cannot be reasonably argued that Defendant Mayor would not have known that BMV's constitutional rights were at issue when he instructed [c]ity officials to keep [p]sychiatric [p]atients out of the [c]ity by stopping BMV's hospital." (ECF No. 24 at 25.) Thus, Defendant Mayor cannot use qualified immunity as a "license to discriminate against certain citizens without fear of reprisal." *Id.*

Qualified immunity is an affirmative defense that is pled by a defendant official. Government officials performing discretionary functions within the scope of their official capacity are generally shielded from liability for civil damages. *Harlow* v. *Fitzgerald*, 457 U.S. 800, 815 (1982). This immunity from liability is qualified—if an official knew or reasonably should have known that the action they took would violate the constitutional rights of a plaintiff, they are not entitled to immunity. *Id.* at 817-18. "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability

when they perform their duties reasonably." *Id.* at 818. Qualified immunity is an immunity from suit rather than a mere defense to liability, thus it must be resolved prior to discovery. *Id.*

A government official is not protected from suit or civil liability if their conduct violates some clearly established statutory or constitutional right and a reasonable person would have known their conduct was unlawful. *Harlow*, 457 U.S. at 818. The defendant official is entitled to qualified immunity if either (1) the alleged conduct did not violate a clearly established right or (2) a reasonable person would not have known the alleged conduct was unlawful. *Williams* v. *Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 557 (3d Cir. 2017). The defendant official has the burden to establish they are entitled to qualified immunity. *E. D.* v. *Sharkey*, 928 F.3d 299, 306 (3d Cir. 2019).

The defendant official must show that, at the time of the alleged conduct, a reasonable person in their position would have believed their conduct was lawful. *E. D.* v. *Sharkey*, 928 F.3d at 306. The law—i.e., the right the plaintiff alleges the defendant official violated—must have a "sufficiently clear foundation in then-existing precedent." *D.C.* v. *Wesby*, 583 U.S. 48, 63 (2018); *see Williams*, 848 F.3d at 570 ("the facts of the existing precedent need not perfectly match the circumstances of the dispute in which the question arises"). "The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Id.*

Property rights are robustly acknowledged within the Third Circuit. *See DeBlasio v. Zoning Bd. Of Adjustment*, 53 F.3d 592, 601 (3d Cir. 1995) (abrogated on other grounds); *Cornell Co., Inc. v. Borough of New Morgan*, 512 F. Supp. 2d 238, 261 (E.D. Pa. 2007); *Blanche Rd. Co. v. Bensalem Twp.*, 57 F.3d 253 (3d Cir. 1995) (abrogated on other grounds). The rule in *DeBlasio* is particularly clear: arbitrary or irrational decisions to deprive a landowner of the right to use or enjoyment of property is a protected right. *DeBlasio*, 53 F.3d at 600-01. Because property rights are sufficiently established in the Third Circuit, a reasonable person in Defendant Mayor's decision would have been aware that arbitrary (and potentially discriminatory) deprivation of Plaintiff's property rights is a violation of the Constitution. Defendant Mayor called a highly irregular meeting, explicitly stated he did not want people of a certain protected class in his city, denied a zoning permit, and even pushed for the revision of laws to codify the exclusion of a psychiatric hospital in the City of Bethlehem. These are not actions that are protected by an official's discretion. More specifically, the Defendant has not demonstrated that his actions meet the standard for qualified immunity protections. Thus, at this motion to dismiss stage, Defendant Mayor has failed to meet their burden of establishing qualified immunity.

IV. CONCLUSION

For the foregoing reasons, the Court dismisses the claims against The City Council of Bethlehem as duplicative of their claims against the City of Bethlehem. The Court grants Defendant Mayor's Motion to Dismiss as

to the § 1983 procedural due process and equal protection claims only and without prejudice. The Court denies City Defendants' and Defendant Mayor's Motion to Dismiss on all remaining claims.

Plaintiff's ADA, RA, and § 1983 claims against the City of Bethlehem and Defendant Mayor in his official capacity survive along with Plaintiff's § 1983 substantive due process claims against Defendant Mayor in his individual capacity.

An appropriate order follows.

BY THE COURT:

/s/ Hon. Kelley B. Hodge
HODGE, KELLEY B., J.

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, FILED SEPTEMBER 30, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

CIVIL ACTION NO. 22-5215

BETHLEHEM MANOR VILLAGE, LLC,

Plaintiff,

v.

CITY OF BETHLEHEM, CITY COUNCIL OF THE CITY OF BETHLEHEM AND ROBERT J. DONCHEZ, FORMER MAYOR OF THE CITY OF BETHLEHEM,

Defendants.

Filed September 30, 2024

ORDER

AND NOW, this 30th day of September, 2024, upon consideration of Defendants' Motions to Dismiss and all responses thereto (ECF Nos. 21-25, 28), it is hereby **ORDERED** that the Motions to Dismiss are **DENIED IN PART** and **GRANTED IN PART**. It is hereby ordered as follows:

Appendix C

(1) City of Bethlehem and City Council of the City of Bethlehem's Motion to Dismiss Plaintiff's Amended Complaint as time-barred is **DENIED**.

(2) City of Bethlehem and City Council of the City of Bethlehem's Motion to Dismiss City Council of the City of Bethlehem as a Defendant is **GRANTED**.

(3) Former Mayor of the City of Bethlehem, Robert J. Donchez's Motion to Dismiss Plaintiff's Amended Complaint as time-barred is **DENIED**.

(4) Former Mayor of the City of Bethlehem, Robert J. Donchez's Motion to Dismiss himself in his official capacity is **DENIED**.

(5) Former Mayor of the City of Bethlehem, Robert J. Donchez's Motion to Dismiss Plaintiff's Amended Complaint as to the Fourteenth Amendment procedural due process and equal protection claims in his individual capacity is **GRANTED**. Those claims are dismissed **WITHOUT PREJUDICE**.

(6) Former Mayor of the City of Bethlehem, Robert J. Donchez's Motion to Dismiss Plaintiff's Amended Complaint as to the Fourteenth Amendment substantive due process claims in his individual capacity is **DENIED**.

(7) Within fourteen (14) days of this Order, Defendants shall file an answer to Plaintiff's First Amended Complaint.

BY THE COURT:

/s/ Hon. Kelley B. Hodge
HODGE, KELLEY B., J.