

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY**

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DAVID LIEBLER,

Plaintiff,

vs.

CITY OF HOBOKEN, HOBOKEN  
CITY COUNSEL; DAWN ZIMMER,  
individually and in her capacity as Mayor  
of the City of Hoboken, RAVINDER S.  
BHALLA, individually and in his  
capacity as Council President,  
THERESA CASTELLANO, individually  
and in his capacity as a Council Member,  
PETER CUNNINGHAM, individually  
and in his capacity as a Council Member,  
JAMES DOYLE, individually and in his  
capacity as a Council Member,  
JENNIFER GIATTINO, individually and  
in his capacity as a Council Member,  
ELIZABETH MASON, individually and  
in his capacity as a Council Member,  
DAVID MELLO, individually and in his  
capacity as a Council Member,  
TIMOTHY OCCHIPINTI, individually  
and in his capacity as a Council Member  
and MICHAEL RUSSO, individually  
and in his capacity as a Council Member,

Defendants.

Civil Action No.:

**(Document Electronically Filed)**

## **COMPLAINT**

Plaintiff, David Liebler (“Plaintiff”), by and through his undersigned counsel, Brach Eichler LLC, hereby brings this Complaint against Defendants, City of Hoboken, Hoboken City Council, Dawn Zimmer, Ravinder S. Bhalla, Theresa Castellano, Peter Cunningham, James Doyle, Jennifer Giattino, Elizabeth Mason, David Mello, Timothy Occhipinti and Michael Russo (collectively, “Defendants”), and in support thereof, avers as follows:

### **NATURE OF THE ACTION**

1. The First Amendment to the United States Constitution makes the freedom of political speech sacrosanct. On October 21, 2015, during the portion of the city council meeting dedicated to comments and questions from members of the public, Defendants deprived Plaintiff of his right through the use of censorship, intimidation and physical force – with the entire incident on video for the world to see.

2. Plaintiff brings this action pursuant to the Civil Rights Act, 28 U.S.C. § 1983 and 1985, seeking to restrain and enjoin Defendants from further engaging in this outrageous behavior, as well as an award of compensatory and punitive damages, counsel fees and costs of suit.

### **PARTIES**

3. Plaintiff, David Liebler, is a citizen of the United States of America and a resident of Hoboken, New Jersey, with an address of 1500 Hudson Street, # 6V, Hoboken, New Jersey 07030.

4. Pursuant to 42 U.S.C. § 1983, Plaintiff has standing to bring a private action to vindicate his constitutional right to freedom of speech.

5. Defendant, City of Hoboken (“Hoboken”), is a municipality organized under the laws of the State of New Jersey and a body politic capable of being sued under federal and state law.

6. Defendant, Dawn Zimmer (“Zimmer” or the “Mayor”), is a resident of the State of New Jersey who serves as Mayor of the City of Hoboken.

7. Defendant, Hoboken City Council (the “Council”), is Hoboken’s law-making body, which is comprised of three at-large members elected to represent the entire city and six members elected to represent each of the individual city wards.

8. Defendant, Ravinder S. Bhalla (“Bhalla”), is a resident of the State of New Jersey who serves as Council President of the Hoboken City Council.

9. Defendant, Theresa Castellano (“Castellano”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

10. Defendant, Peter Cunningham (“Cunningham”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

11. Defendant, James Doyle (“Doyle”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

12. Defendant, Jennifer Giattino (“Giattino”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

13. Defendant, Elizabeth Mason (“Mason”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

14. Defendant, David Mello (“Mello”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

15. Defendant, Tim Occhipinti (“Occhipinti”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

16. Defendant, Michael Russo (“Russo”), is a resident of the State of New Jersey and a member of the Hoboken City Council.

### **JURISDICTION**

17. This Court has subject matter jurisdiction over this action because it arises under the United States Constitution and the Civil Rights Act, 42 U.S.C. § 1983. As a result, the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

18. This Court has personal jurisdiction over Defendants because they are residents of the State of New Jersey, and regularly conduct business in the State of New Jersey.

### **VENUE**

19. Pursuant to 28 U.S.C. § 1391, venue is proper in the District of New Jersey because Defendants are located in the State of New Jersey and reside in this judicial district.

### **FACTS COMMON TO ALL COUNTS**

20. Pursuant to the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.*, the Council has adopted a policy under which a portion of every council meeting is set aside for members of the public to speak about any issue of importance to them or the municipality.

21. This segment of the council meeting is referred to as the “public comment” portion of Hoboken’s meeting agendas.

22. During the “public comment” portion of the council meeting, any member of the public has the right to speak for five minutes regarding such governmental issues.

23. Since becoming a resident of Hoboken, Plaintiff has been politically active in the community and has frequently spoken during the “public comment” portion of council meetings, on a variety of governmental issues.

24. On October 21, 2015, Hoboken conducted its regularly scheduled council meeting.

25. In advance of the October 21, 2015 council meeting, Plaintiff provided notice to the Council of his intent to participate in the “public comment” segment of this council meeting.

26. When it was his turn to speak, Plaintiff addressed several matters of public concern including, but not limited to, bike safety, real estate projects and budgetary issues.

27. Near the end of his allotted five minutes, Plaintiff attempted to speak about a news story that had appeared earlier that day regarding the Mayor’s husband, Stan Grossbard (“Grossbard”).

28. This news story claimed that Mr. Grossbard – an unelected individual with no formal position within the Hoboken government – had frequently communicated with and provided advice to the Hoboken Housing Authority in connection with the termination of its Executive Director, Carmelo Garcia (“Garcia”), in August 2014.

29. When Plaintiff expressed his concerns that an unelected individual, Mr. Grossbard, was wielding authority and influence over Hoboken’s governmental affairs, the Council President, Mr. Bhalla, immediately and repeatedly interrupted and shouted at Plaintiff to prevent him from speaking.

30. The interference and interruption of Plaintiff’s public comments was a clear attempt by the Council, through Mr. Bhalla, to censor Plaintiff’s political speech.

31. When Plaintiff objected, and reminded the Council that this portion of the meeting was dedicated to public comment, Mr. Bhalla continued to shout at Plaintiff to prevent him from speaking.

32. For the balance of his speaking time, Plaintiff repeatedly attempted to express his concerns regarding these political issues.

33. In response, Mr. Bhalla tried to intimidate Plaintiff by continuing to shout at him, and then threatening to remove him from the council meeting.

34. Thereafter, Mr. Bhalla ordered three police officers to forcefully remove Plaintiff from the council meeting against his will.

35. This entire incident is on video, which is available at <http://www.ustream.tv/recorded/75977949>, between the one hour and seven minute mark (1:07) and the one hour and twelve minute mark (1:12).

36. Remarkably, this was the second incident during the October 21, 2015 council meeting in which Mr. Bhalla – during the public comment segment of the meeting – prevented an individual from expressing concerns about the political activities of Mr. Grossbard.

37. Similar to Plaintiff, this second individual objected to Mr. Bhalla's censorship and intimidation, and then shortly thereafter, was forcibly removed from the council meeting against his will at the direction of Mr. Bhalla.

38. This second incident is also on video, which is available at <http://www.ustream.tv/recorded/75977949>, between the thirty minute mark (:30) and the thirty-three minute mark (:33).

39. Each of the council members was present during the October 21, 2015 council meeting, and either expressly or implicitly supported Mr. Bhalla's actions taken on behalf of the Council.

40. These incidents evidence a pattern and practice on the part of Hoboken, the Council, and each of the individual council members to suppress political speech they disagree with and/or disapprove.

41. Upon information and belief, Mayor Zimmer has conspired with Hoboken, the Council, and each of the individual council members to prevent residents from openly discussing, at council meetings, her husband's political activities and involvement in Hoboken's governmental affairs.

42. By virtue of these formal actions, taken under the color of law, Defendants prohibited Plaintiff from exercising his First Amendment right to free speech.

43. In addition, Defendants have trampled Plaintiff's due process rights, which are guaranteed by the Fourteenth Amendment to the United States Constitution ("Fourteenth Amendment").

44. The injunctive relief requested here is necessary to ensure that Defendants do not engage in any further actions aimed at suppressing the free speech and due process rights of the residents of Hoboken, New Jersey.

## **COUNT I**

### **Deprivation Of The Freedom Of Speech In Violation Of The First Amendment To The United States Constitution And 42 U.S.C. § 1983**

45. Plaintiff incorporates by reference the allegations contained in paragraphs 1-44 above as if fully set forth herein at length.

46. The First Amendment of the United States Constitution ("First Amendment") prohibits any governmental entity from abridging the freedom of speech.

47. The Civil Rights Act, 42 U.S.C. § 1983 (“Section 1983”), states in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, suit in equity, or other proper proceeding for redress[.]

48. During the “public comment” segment of the October 21, 2015 council meeting, Hoboken, the Council and each of the individual council members prevented Plaintiff from engaging in open discussion regarding certain political issues impacting Hoboken, namely the authority and influence of unelected individuals over Hoboken’s governmental affairs.

49. In addition to preventing him from speaking, Hoboken, the Council and each of the individual council members harassed and intimidated Plaintiff, and then forcibly removed him from the October 21, 2015 council meeting against his will.

50. By engaging in this outrageous conduct, Hoboken, the Council and each of the individual council members have interfered with and restrained Plaintiff’s right to free speech, which is guaranteed by the First Amendment and Section 1983.

51. The actions of Hoboken, the Council, and each of the individual council members constitutes an impermissible prior restraint, in violation of the First Amendment and Section 1983.

52. The actions of Hoboken, the Council, and each of the individual council members causes a chilling effect on the exercise of free speech under the First Amendment, is patently discriminatory and illegal, and prevents important matters of public concern from being openly discussed at council meetings.

53. The actions of Hoboken, the Council, and each of the individual council members cannot be justified by a rational basis or compelling state interest.

54. As a direct and proximate result the aforementioned conduct, Plaintiff has suffered damages including, but not limited to, the deprivation of his right to free speech under the First Amendment and Section 1983.

55. Unless restrained from doing so, Hoboken, the Council, and each of the individual council members will continue to violate Plaintiff's First Amendment right to participate in the "public comment" segment of council meetings.

56. Plaintiff has no adequate remedy at law because the damages and injuries that he has suffered, is suffering and will continue to suffer are not capable of being ascertained with any specificity.

57. Unless the requested relief is granted, Plaintiff will continue to suffer irreparable damage to his First Amendment right of free speech.

## **COUNT II**

### **Conspiracy To Deprive The Freedom Of Speech In Violation Of The First Amendment To The United States Constitution And 42 U.S.C. § 1985**

58. Plaintiff incorporates by reference the allegations contained in paragraphs 1-56 above as if fully set forth herein at length.

59. The Civil Rights Act, 42 U.S.C. § 1985 ("Section 1985"), states in pertinent part:

[I]n any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and

exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

60. During the October 21, 2015 council meeting, Hoboken, the Council, and each of the individual council members prevented any speech that concerned the involvement of Mayor Zimmer's husband, Mr. Grossbard, in Hoboken's governmental affairs.

61. Upon information and belief, Mayor Zimmer conspired with Hoboken, the Council, and each of the individual council members to prevent any open discussion, at council meetings, regarding her husband's political activities and involvement in Hoboken's governmental affairs, in violation of the First Amendment and Section 1985.

62. Upon information and belief, Mayor Zimmer was fully aware of, consented to and expressly authorized Hoboken, the Council, and each of the individual council members to engage in the aforementioned conduct towards Plaintiff.

63. As a direct and proximate result the aforementioned conduct, Plaintiff has suffered damages including, but not limited to, the deprivation of his right to free speech under the First Amendment and Section 1983.

64. Unless restrained from doing so, Defendants will continue their conspiracy to violate Plaintiff's First Amendment right to participate in the "public comment" segment of council meetings.

65. Plaintiff has no adequate remedy at law because the damages and injuries that he has suffered, is suffering and will continue to suffer are not capable of being ascertained with any specificity.

66. Unless the requested relief is granted, Plaintiff will continue to suffer irreparable damage to his First Amendment right of free speech.

**COUNT III**

**Deprivation Of Due Process In Violation Of The  
Fourteenth Amendment To The United States Constitution And 42 U.S.C. § 1983**

67. Plaintiff incorporates by reference the allegations contained in paragraphs 1-65 above as if fully set forth herein at length.

68. By engaging in the aforementioned conduct, Defendants have deprived Plaintiff of due process in violation of the Fourteenth Amendment to United States Constitution (“Fourteenth Amendment”) and Section 1983.

69. As a direct and proximate result the aforementioned conduct, Plaintiff has suffered damages including, but not limited to, the deprivation of his due process rights under the Fourteenth Amendment.

70. Unless restrained from doing so, Defendants will continue to violate Plaintiff’s Fourteenth Amendment right to due process.

71. Plaintiff has no adequate remedy at law because the damages and injuries that he has suffered, is suffering and will continue to suffer are not capable of being ascertained with any specificity.

72. Unless the requested relief is granted, Plaintiff will continue to suffer irreparable damage to his Fourteenth Amendment right of due process.

**COUNT IV**

**Deprivation Of The Freedom Of Speech In Violation  
Of The New Jersey Constitution And N.J.S.A. 10:6-2**

73. Plaintiff incorporates by reference the allegations contained in paragraphs 1-65 above as if fully set forth herein at length.

74. Article I of the New Jersey Constitution prohibits any governmental entity from abridging of the freedom of speech.

75. The New Jersey Civil Rights Act, N.J.S.A. 10:6-2 (“NJCRA”), states in pertinent part:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

76. By engaging in the aforementioned conduct, Defendants have interfered with and restrained Plaintiff’s right to free speech, which is guaranteed by the New Jersey Constitution and the NJCRA.

77. Unless restrained from doing so, Defendants will continue to violate Plaintiff’s right to participate in the “public comment” segment of council meetings, which is guaranteed by the New Jersey Constitution and the NJCRA.

78. Plaintiff has no adequate remedy at law because the damages and injuries that he has suffered, is suffering and will continue to suffer are not capable of being ascertained with any specificity.

79. Unless the requested relief is granted, Plaintiff will continue to suffer irreparable damage to his right of free speech, which is guaranteed by the New Jersey Constitution and the NJCRA.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests judgment in his favor and against Defendants, including the following relief:

1. An Order preliminarily and permanently restraining and enjoining Defendants from interfering with and/or restricting Plaintiff’s right to free speech under the First

Amendment and New Jersey Constitution, pursuant to 42 U.S.C. § 1983 and N.J.S.A. 10:6-2(c). This specifically includes, but is not limited to, Plaintiff's right to address Hoboken, the Council, and each of the individual council members during the "public comment" segment of regularly scheduled council meetings regarding any governmental and/or political issue that is of concern to the residents of Hoboken.

2. An Order preliminarily and permanently restraining and enjoining Defendants from interfering with and/or restricting Plaintiff's due process rights under the Fourteenth Amendment and New Jersey Constitution, pursuant to 42 U.S.C. § 1983 and N.J.S.A. 10:6-2(c).

3. Damages in an amount that is fair, reasonable and just to compensate Plaintiff for the injuries he suffered.

4. Reasonable counsel fees and costs of suit, pursuant to 42 U.S.C. § 1988 and N.J.S.A. 10:6-2 (f).

5. Civil penalties pursuant to N.J.S.A. 10:6-2(e).

6. Any other relief the Court deems just and proper under the circumstances.

### **DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Charles X. Gormally, Esq., as trial counsel.

### **BRACH EICHLER LLC**

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*Attorneys for Plaintiff, David Liebler*

Dated: November \_\_, 2015

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

Pursuant to Local Civil Rule 11.2, the undersigned hereby certifies that neither Plaintiff nor counsel is aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, that is related to the matter in controversy.

**BRACH EICHLER LLC**

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Dated: November \_\_\_\_, 2015