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his actions. Second, collateral estoppel was inapplicable because the legal and factual issues decided in the criminal trial were not identical to those in the civil actions, and the City was not in privity with Giordano. The district court granted the City's motion and dismissed all claims brought against it. The plaintiffs appealed, arguing that the City should be held liable because Giordano was a final policymaker for the City, and was acting within his official policymaking capacity when he sexually abused the plaintiffs.

The U.S. Court of Appeals for the Second Circuit affirmed. Under *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978), to prevail in a claim against a municipality under Section 1983 arising from the acts of a public official, a plaintiff had to prove, among other things, that an official policy of the municipality caused the constitutional injury. Where a plaintiff sought to hold a municipality liable for a single decision by a municipal "policymaker," he or she had to show that the official had final policymaking power with respect to the particular conduct being challenged. The fact that Giordano was the mayor in a "strong mayor" form of city government and was, as a result, the Chief Executive Officer of the City, was insufficient to satisfy these requirements. He acted entirely outside his official policymaking capacity when he misused his power to advance a purely personal agenda. His authority as mayor did not empower him to violate clearly established law, and he was not an official policymaker with respect to the area of policy that encompassed his tortious acts: decisions to "sexually abuse young children are not 'made for practical or legal reasons' and are not in any way related to the City's interests." At most, he could be said to have had "some enforcement power with respect to the crime of sexual abuse based on his authority over the police department." Given the foregoing findings, the court found it unnecessary to address the collateral estoppel issue. *Roe v. City of Waterbury*, 542 F. 3d 31 (2d Cir. 2008).

Personnel and Employment

Political Speech Rights

In 2004, Town of Stoughton officials decided against renewing the contract of the police chief, Cachopa. This decision was controversial and a local campaign resulted to recall the selectmen who had voted in favor of the decision. The plaintiff, Welsh, was a detective sergeant (the highest-ranking position in his division) in the police department. He decided not to participate in activities related to the recall and to remain neutral. Cachopa apparently interpreted this as a sign of betrayal. During the campaign, the police department began investigating allegations of misconduct by Cachopa. Welsh was asked by the-then acting police chief to assist in this investigation, and while doing so, Welsh was subjected to harassment by other officers (for example, he found a bullet in his mailbox). Ultimately, the recall campaign was successful and Cachopa resumed his position as police chief for a short time, before being placed on administrative leave for his previous misconduct. The new acting police chief, a Cachopa supporter, decided not to reappoint Welsh to his detective sergeant position, replacing him with an officer who had supported Cachopa. (Other officers who supported him were promoted as well.) Welsh filed a Section 1983 action against the Town, Cachopa, and others who had participated in the decision not to reappoint him. Welsh claimed retaliation in violation of his First Amendment rights based on the refusal to reappoint, and by subjecting him to a hostile work environment. The district court granted summary judgment for the defendants.

The U.S. Court of Appeals for the First Circuit affirmed in part and reversed and remanded in part. Reviewing the decision not to reappoint Welsh, the court held this did constitute a cognizable adverse employment action, based on *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), where the Supreme Court held that adverse actions short of outright dismissal or demotion, such as denials of a promotion or rehiring, could still constitute adverse employment actions. However, the court limited liability only to the officer directly having the authority to appoint. (Here, it was the acting police chief, not Cachopa.) The court also dismissed the claim against Cachopa for harassment, as Cachopa was not responsible for the harassment perpetrated by other officers (who were not named as defendants). According to the First Circuit, a supervisor who did not participate in harassment could only be held liable if, among other factors, the supervisor's "action or inaction was affirmatively linked to the behavior in the sense that it could be characterized as supervisory encouragement, condonation or acquiescence or gross negligence of the supervisor amounting to deliberate indifference." Welsh, in this case, failed to produce evidence that Cachopa's conduct constituted such encouragement or acquiescence. The court also addressed the claim that the defendants violated free speech and political affiliation rights. Pursuant to *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006), Welsh was required to show that he spoke on a matter of public concern. Welsh contended that the matter of public concern was the recall election, and that his silence constituted speech. The court agreed, but did not find an actionable violation of speech rights because Welsh did not produce evidence that he was ordered to endorse, support, or reject the recall campaign. The court, however, did find an actionable violation of his right to political affiliation, as Welsh produced evidence that officers who did not support the recall campaign were perceived as opposing it and were harassed. "[T]he freedom not to support a candidate or cause is integral to the freedom of association and freedom of political expression protected by the First Amendment." The case was remanded to the district court. *Welch v. Ciampa*, 542 F. 3d 927 (1st Cir. 2008).

Speech Rights—Working Conditions

In another employee speech-retaliation case, *Miller v. Clinton County*, 544 F. 3d 542 (3d Cir. 2008), Miller was employed as a probation officer in the Clinton County Probation Office. The employees had a collective bargaining agreement with the County.