

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of October, two thousand twenty-six.

PRESENT: DEBRA ANN LIVINGSTON,
 SARAH A. L. MERRIAM,
 MATTHEW A. SCHWARTZ,
 Circuit Judges.

OTIS COWART, JR.; LARRY BLATT; ALFRED
POWELL,

Plaintiffs-Appellants,

v.

25-2616-cv

PAUL ARTETA, individually and in his official
capacity as Orange County Sheriff; ORANGE
COUNTY SHERIFF’S OFFICE; COUNTY OF
ORANGE,

Defendants-Appellees.

FOR PLAINTIFFS-APPELLANTS: JONATHAN R. GOLDMAN, Goldman Law, PLLC,
Newburgh, NY.

FOR DEFENDANTS-APPELLEES: BLAIR J. HENDRICKS (Annemarie S. Jones, *on
the brief*), Sokoloff Stern LLP, Carle Place, NY.

Appeal from the September 26, 2025, judgment of the United States District Court
for the Southern District of New York (Seibel, *J.*).

Upon due consideration, the judgment of the District Court is **AFFIRMED**.

Plaintiffs-appellants Otis Cowart, Jr., Larry Blatt, and Alfred Powell appeal from
the grant of summary judgment in favor of defendants-appellees Paul Arteta and Orange
County.¹ Plaintiffs were formerly employed as Program Integrity Officers (“PIO”s) in
the Orange County Sheriff’s Office; their employment was terminated by defendant Paul
Arteta when he assumed the office of Sheriff. Plaintiffs brought this action alleging that
Arteta fired them in retaliation for their support of Arteta’s opponent in the primary
election. They asserted claims under (1) 42 U.S.C. §1983 for violation of their First
Amendment rights and (2) New York Labor Law §201-d. Defendants moved for
summary judgment on both counts.

The District Court granted summary judgment in favor of all defendants on the
§1983 claim, concluding that “even assuming Plaintiffs were fired for their political
affiliation, their positions were exempt from First Amendment protection under the

¹ Appellants acknowledge that the Orange County Sheriff’s Office, originally named as a
defendant, is not separately amenable to suit. *See* Appellants’ Br. at 3 n.1. They do not appeal
the dismissal of that defendant from this action.

Elrod-Branti ‘policymaker’ exception.” *Cowart v. Arteta*, No. 7:23CV09412(CS), 2025 WL 2733827, at *4 (S.D.N.Y. Sept. 25, 2025). In the alternative, the District Court held that Arteta was entitled to qualified immunity because he “plainly had a reasonable basis to believe that the PIO position fell within the policymaker exception.” *Id.* at *7. The District Court further held that “the dismissal of Plaintiffs’ underlying First Amendment claim . . . dooms their *Monell* claim” against Orange County. *Id.* at *9.² The District Court declined to exercise supplemental jurisdiction over the remaining state law claim and dismissed that claim without prejudice. *See id.*

We assume the parties’ familiarity with the facts and procedural history of the case which we recite only as necessary to explain our decision to affirm.

STANDARD OF REVIEW

“We review the district court’s rulings on summary judgment *de novo*, resolving all ambiguities and drawing all permissible inferences in favor of the nonmoving party. Summary judgment is appropriate only if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Bustamante v. KIND, LLC*, 100 F.4th 419, 432 (2d Cir. 2024) (citation modified).

DISCUSSION

The District Court concluded that under the *Elrod-Branti* exception defendant Arteta did not violate plaintiffs’ First Amendment rights by terminating their employment, even if he did so based on plaintiffs’ support of Arteta’s opponent in the

² A “*Monell* claim” refers to a claim brought pursuant to *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978).

preceding primary election. Upon *de novo* review, we come to the same conclusion.

The *Elrod-Branti* exception stems from the Supreme Court's decisions in two cases: *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, 445 U.S. 507 (1980).

Taken together, those cases provide that certain public employees can be dismissed from employment based on their political affiliations without violating the First Amendment if “the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.” *Branti*, 445 U.S. at 518.

The Supreme Court concluded that an exception to the usual First Amendment protections was necessary to prevent “an employee’s private political beliefs” from “interfer[ing] with the discharge of his public duties,” thereby undermining the “State’s vital interest in maintaining governmental effectiveness and efficiency.” *Id.* at 517.

In *Vezzetti v. Pellegrini*, we identified eight factors that are “useful in deciding whether a position” is subject to the *Elrod-Branti* exception:

whether the employee (1) is exempt from civil service protection, (2) has some technical competence or expertise, (3) controls others, (4) is authorized to speak in the name of policymakers, (5) is perceived as a policymaker by the public, (6) influences government programs, (7) has contact with elected officials, and (8) is responsive to partisan politics and political leaders.

22 F.3d 483, 486 (2d Cir. 1994). “This is not an exhaustive list of indicators, nor is any one factor or group of them always dispositive. The proper approach is to assess all the factors in order to determine whether there is a rational connection between shared ideology and job performance.” *Id.* (citation modified). “In determining whether a government employee’s position is protected under this standard, we look primarily to the inherent duties of the position, not the actual duties performed by the employee in a

particular case. Our analysis of the inherent duties focuses on the job description of that position.” *Bavaro v. Pataki*, 130 F.3d 46, 50 (2d Cir. 1997) (citation modified).

“Examining [plaintiffs’ PIO] position in light of these factors,” and based on the undisputed facts in the record, we conclude, as did the District Court, that each plaintiff “held a job for which political affiliation is a valid consideration.” *Vezzetti*, 22 F.3d at 486. Plaintiffs conceded in the District Court “that the first factor, exemption from civil service protection, favors defendants.” *Cowart*, 2025 WL 2733827, at *5. Although not dispositive, this factor “has been considered important by this circuit.” *Bavaro*, 130 F.3d at 50 (citation modified). And it is undisputed that when the PIO position was created, it was recommended to “be non-civil service” so as to give “greater latitude to terminate PIOs who undermine the program and that would not be beneficial to maintain the employment of that person.” Joint App’x at 2128 (citation modified).

The remaining factors generally support a finding that the *Elrod-Branti* exception applies. The second factor supports applying the exception because “[t]he PIO position requires particular skills and expertise.” Joint App’x at 2129. The District Court found that the third factor was either neutral or slightly favored plaintiffs; on appeal, defendants do not challenge that finding. *See Appellees’ Br.* at 28 n.2.

This Court has “previously condensed the remaining *Vezzetti* factors to ask ‘whether the employee in question is empowered to act and speak on behalf of a policymaker, especially an elected official.’” *Butler v. N.Y. State Dept. of Law*, 211 F.3d 739, 744 (2d Cir. 2000) (quoting *Gordon v. Cnty. of Rockland*, 110 F.3d 886, 890 (2d Cir. 1997)). The parties agree that the PIO job description includes, among other tasks,

[c]onducting officer integrity checks and internal investigations into allegations of officer corruption and/or misconduct; . . . [i]nterviewing witnesses and targets of internal investigations; . . . [c]ompleting and fil[ing] classified and confidential reports with the Sheriff as required; [r]eviewing office policies and forms and ensur[ing] compliance with established professional police and corrections professional standards; [m]aintaining working relationships with Sheriff and Corrections command staff and other agencies; and [c]ompleting special assignments as directed.

Joint App’x at 2127 (citation modified). These duties support a finding that a PIO “is empowered to act and speak on behalf of a policymaker, especially” – as here – “an elected official.” *Butler*, 211 F.3d at 744 (quoting *Gordon*, 110 F.3d at 890); *see also*, *e.g.*, *Danahy v. Buscaglia*, 134 F.3d 1185, 1192 (2d Cir. 1998) (noting that the “authority to receive and transmit confidential information” is an indicator that the exception applies); *Bavaro*, 130 F.3d at 50 (finding the exception applied to attorneys who were “not empowered to speak directly on behalf of an elected official” but “reflect the views of policymakers in their dealings with” those they investigate and prosecute). Although plaintiffs dispute that they actually reported to the Sheriff or Undersheriff directly, they do not dispute that the PIO job description states that the position is supervised by the Undersheriff and Sheriff. *See* Joint App’x at 658. The job description also makes clear that a PIO has “wide latitude for independent judgment in carrying out” duties “in accordance with established office policies.” Joint App’x at 658. And the PIO position requires the “ability to work with local, State and Federal authorities; . . . integrity; tact; [and] good judgment.” Joint App’x at 659.

Defendants have demonstrated that there is no genuine dispute of material fact, and that the *Elrod-Branti* exception applies to plaintiffs’ positions based on the

undisputed facts in the record. This conclusion defeats any claim against Arteta and any *Monell* claim against the County. *See Askins v. Doe No. 1*, 727 F.3d 248, 253 (2d Cir. 2013) (observing that a municipality “cannot be liable under *Monell* where Plaintiff cannot establish a violation of his constitutional rights” (citation modified)). Accordingly, defendants are entitled to summary judgment.

For the foregoing reasons, the judgment of the District Court is **AFFIRMED**.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court