

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

WAYNE A. BROWN,)
)
 PLAINTIFF)
)
v.)
)
TOWN OF SOUTH THOMASTON,)
ET AL.,)
 DEFENDANTS)

CIVIL No. 08-308-P-H

**ORDER AFFIRMING RECOMMENDED DECISION
OF THE MAGISTRATE JUDGE**

Upon *de novo* review, I **AFFIRM** the Magistrate Judge’s recommended decision to grant summary judgment to the defendants on Count II, the plaintiff’s free speech claim. The plaintiff Brown does not challenge the Magistrate Judge’s assertion that “it is undisputed that Brown cannot think of anything that he would have expressed, any speech that he would have made, or any statement that he would have made, that he did not make because of the conduct of the Town or the individual defendants.” Recommended Decision on Def.’s Mot. for Summ. J. at 43 (Docket Item 41). But he objects to the Magistrate Judge’s reliance on Sullivan v. Carrick, 888 F.2d 1 (1st Cir. 1989),¹ to reject his First Amendment claim on that basis (no redressable injury), arguing that he need not have been actually chilled in his speech, but need show only that by an objective

¹ Although the Magistrate Judge rested his decision on an earlier Magistrate Judge’s decision from
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standard someone else would have been chilled. Objection to Recommended Decision (Docket Item 44). His objections to the Sullivan holding (*e.g.*, authority from other Circuits; Supreme Court decisions in other contexts; later First Circuit decisions in other contexts) might persuade the First Circuit to overrule Sullivan. But it has not yet done so, and I am unpersuaded that Sullivan is distinguishable from this case. Therefore, like the Magistrate Judge, I apply the applicable First Circuit authority and conclude that Brown cannot proceed on Count II.

The defendants' motion for summary judgment on Count II is **GRANTED**.

SO ORDERED.

DATED THIS 13TH DAY OF AUGUST, 2009

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

this District as well, I rest my affirmance solely upon Sullivan.

**U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET FOR CASE #: 2:08cv308 (DBH)**

WAYNE A BROWN,

Plaintiff

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v.

TOWN OF SOUTH THOMASTON,

and

JOHN SPEAR, *individually and in his
official capacity as Selectman for the
Town of Thomaston,*

and

JEFFREY NORTHGRAVES,
*individually and in his official
capacity as Selectman for the town of
South Thomaston,*

and

PENELOPE ALLEY,
*individually and in her official
capacity as Selectman for the Town of
South Thomaston,*

Defendants

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