

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 21 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IAN DAY,

Plaintiff - Appellant,

v.

CITY OF PHOENIX, a municipality of The
State of Arizona,

Defendant - Appellee,

No. 23-3751

D.C. No.

2:22-cv-00177-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

David G. Campbell, District Judge, Presiding

Submitted July 14, 2025**

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

Ian Day appeals pro se from the district court's summary judgment in his action under 42 U.S.C. § 1983 alleging First Amendment retaliation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Christie v. Iopa*, 176

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

F.3d 1231, 1234 (9th Cir. 1999). We may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058–59 (9th Cir. 2008). We affirm.

The district court properly granted summary judgment for the City of Phoenix, because Day did not establish a genuine dispute of material fact as to whether the City could be held liable for his termination from his position in the Water Services Department, allegedly in retaliation for protected speech.

For the City to be liable under § 1983 for the Department’s Interim Director’s action in firing Day, Day had to establish that the Interim Director was either a final policymaker as to employment-related decisions or was acting pursuant to a delegation of final policymaking authority. *See Christie*, 176 F.3d at 1236–37. Day established neither. To determine “whether the [final] policymaker merely has delegated discretion to act, or whether it has . . . delegat[ed] final policymaking authority,” we “consider whether the official’s discretionary decision is ‘constrained by policies not of that official’s making’ and whether the official’s decision is ‘subject to review by the municipality’s authorized policymakers.’” *Id.* (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988); *see also Lytle v. Carl*, 382 F.3d 978, 982 (9th Cir. 2004) (to determine whether a municipal “employee is a final policymaker, we look first to state law”).

Under the Phoenix City Code, the Director had discretionary authority over hiring and firing in his Department, but not to set employment policies, and his

actions were subject to the approval of the City Manager. Phoenix, Ariz. Mun. Code § 37-2 (2020); *see Gillette v. Delmore*, 979 F.2d 1342, 1349 (9th Cir. 1992) (that an official “possessed the discretionary authority to hire and fire employees” was not on its own “sufficient to establish a basis for municipal liability,” and there was no evidence that the official “was responsible for establishing the City’s employment policy”). The City Manager did not delegate final authority over employment policy. *See* Phoenix, Ariz. Mun. Code § 2-5 (2020); *see also Christie*, 176 F.3d at 1236. The City therefore cannot be held liable under § 1983.

We decline to consider Day’s argument, raised for the first time on appeal, that the City’s Civil Service Board, which approved his termination, is a final policymaker. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (declining to reach an issue raised for the first time on appeal).

The district court did not reach the substance of Day’s First Amendment claim. We need not do so either, because the failure to establish municipal liability disposes of the action.

AFFIRMED.