

# **Bond Case Briefs**

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## **FIRST AMENDMENT RETALIATION - PENNSYLVANIA**

### **Feibush v. Johnson**

**United States District Court, E.D. Pennsylvania - August 25, 2016 - F.Supp.3d - 2016 WL 4478775**

Real estate developer brought action against city councilman, alleging First Amendment retaliation based on councilman's efforts to stop sale of two city lots to developer in retaliation for developer's criticisms of councilman and challenge of councilman for office.

After jury returned verdict in favor of developer, councilman moved for judgment as a matter of law.

The District Court held that:

- Evidence demonstrated that councilman's actions were sufficient to deter a person of ordinary fitness from exercising his First Amendment rights, as required for retaliation claim;
- Evidence demonstrated that municipal custom or policy was moving force behind developer's injuries, as required for *Monell* claim; and
- Developer was not required to present evidence of city's deliberate indifference in making his *Monell* claim.

Given the evidence at trial, it was reasonable for jury to conclude that real estate developer's potential financial loss, allegedly caused by city councilman's refusal to introduce resolution into city council approving sale of two city-owned lots to developer, was sufficient to deter a person of ordinary firmness from exercising his First Amendment rights, as required for retaliation claim by developer, who alleged that councilman's conduct was in response to developer's challenge for councilman's position in city council and general criticism of councilman. Real estate developer allegedly lost out on \$260,000 profit he would have realized had he been able to buy the lots and develop them as he had planned.

Given the evidence presented at trial, it was reasonable for jury to conclude that real estate developer's First Amendment rights were violated and that a municipal custom or policy was the moving force behind his injuries, as required for *Monell* claim based on city councilman's block of sale of two city lots to developer, following developer's political challenge and criticism of councilman, which caused developer to sustain financial loss. Councilman would not have been able to block the sale of two city lots to developer absent city's custom of councilmanic prerogative, confident that he would not be subverted by his city council colleagues because custom required deference by them to his decision not to introduce resolution approving the sale.

Real estate developer's *Monell* claim, based on city councilman's prevention of sale of two city lots to developer by refusing to introduce resolution approving the sale, was premised on custom of city council which gave council members power to stop any land use requiring legislative approval, rather than conduct of city employees and city's deliberate indifference thereto, and thus developer was not required to present evidence regarding deliberate indifference.

