

United States Court of Appeals For the First Circuit

No. 24-1720

MARC SAVAGE; RANDOLPH BLAKE,

Plaintiffs, Appellants,

v.

CITY OF SPRINGFIELD; SPRINGFIELD FIRE DEPARTMENT; JOSEPH CONANT,
Former Springfield Fire Commissioner; BERNARD J. CALVI,
Springfield Fire Commissioner,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Katherine A. Robertson, U.S. Magistrate Judge]

Before

Montecalvo, Lipez, and Aframe,
Circuit Judges.

Arnold J. Lizana III, with whom Law Office of Arnold J. Lizana III P.C. was on brief, for appellants.

Edward M. Pikula, with whom Lisa Caryl deSousa was on brief,
for appellees.

September 16, 2026

LIPEZ, Circuit Judge. Captain Marc Savage and Lieutenant Randolph Blake are Black firefighters employed by the Springfield Fire Department ("SFD") in Springfield, Massachusetts ("the City"). In 2018, they filed a complaint in federal court against the City, the SFD, and the former and current Springfield Fire Commissioners alleging, inter alia, racial and religious discrimination, retaliation, and hostile work environment in violation of Title VII of the Civil Rights Act of 1964 and Massachusetts General Laws ("MGL") Chapter 151B. After defendants prevailed at trial, Savage and Blake brought this appeal, arguing that the district court made multiple errors that misled and misinformed the jury. Finding no such errors, we affirm the jury's verdict.

I.

A. Background

We begin by explaining plaintiffs' theory of the case, drawing from evidence presented at trial and from the parties' filings. Savage, who is Muslim, and Blake, who is a Jehovah's Witness, allege "unrelenting[] harass[ment] by supervisors and coworkers because of their race and religion" beginning around 2014. Among other contentions, they assert racial bias against minority applicants for positions with the SFD and favoritism toward white employees.

In March 2014, Savage sat for a promotional examination for the position of Deputy Fire Chief. Then-Fire Commissioner Joseph Conant was aware that Savage was one of only two employees taking this exam. The other employee, Glenn Guyer, was a white resident of a different city. A city ordinance requires the Deputy Fire Chief to live in Springfield, and that requirement can only be waived by the mayor. According to Blake and Savage, the mayor denied the white candidate's request for a waiver in this case, leaving Savage as the only eligible applicant for the position. Approximately three months later, Conant requested that the results for that exam be invalidated because there were only two applicants.

In July and September 2014, Savage filed formal complaints, first with the Massachusetts Civil Service Commission, and then with the Massachusetts Commission Against Discrimination ("MCAD"), asserting that this retroactive invalidation of the exam results was racially discriminatory. Savage and Blake claim that, as Black employees, and in retaliation for Savage's formal complaints and an eventual lawsuit against the City,¹ they were

¹ In 2016, before filing the complaint in this case, Savage sued the City in state court in Massachusetts to enforce the Springfield residency requirement. See Savage v. City of Springfield, No. 1679CV00364, 2021 WL 7083094, at *8 (Mass. Super. Ct. Dec. 21, 2021). In its decision, the Hampden County Superior Court observed that the version of the residency ordinance before it provided that "all employees employed by the City of Springfield on March 17, 1995, shall be considered to have fully complied with

disparately treated during the next several years in various hiring and promotion decisions.

For example, Savage points to his subsequent treatment in connection with his application for Deputy Fire Chief in 2014. Although the Deputy Chief exam referenced earlier was canceled after the fact, Savage scored high enough that he was also eligible to apply for the position of District Chief, apparently one step lower in rank from Deputy Chief.² To prepare for a potential interview, he requested a certain kind of training but was told he would need to serve as Permanent Captain for six months before he could be trained. Later, during a pre-interview evaluation, the

the residency provisions of this article." Id. at *4 (quoting Springfield, Mass. Rev. Ordinances ch. 73, Art. II, § 73-8). Additionally, "all persons promoted by the City on or after March 17, 1995 shall be or within one year of such promotion become a resident of the City Failure to do so shall be determined to be a voluntary termination of employment." Id. (quoting Springfield, Mass. Rev. Ordinances ch. 73, Art. II, § 73-9). Although the Superior Court found, in part, that the SFD was not complying with the ordinance requirement to confirm residency annually, see id. at *6, *8, evidence came in at trial suggesting that promotion of Savage's competitor for the Deputy Chief position, Glenn Guyer, did not violate the residency ordinance because he was originally hired before the ordinance went into effect, see id. at *4 n.7.

² The District Fire Chief rank is shown directly below the Deputy Fire Chief rank on the Fire Promotional List of the Civil Service Eligible Lists page for the City of Springfield on the Commonwealth of Massachusetts' official state website. See Springfield Fire, Mass.gov (August 19, 2026) <https://www.mass.gov/info-details/civil-service-eligible-lists> (on the "Civil Service Eligible Lists" webpage select "Fire Promotional" under the heading "Promotional Eligible Lists," then select "Springfield") [<https://perma.cc/2JC7-DCJ4>].

District Chief who conveyed that requirement, allegedly "a golfing buddy" of Conant's, informed Savage that he was not ready for the position because he had not received that training. That District Chief subsequently gave Savage a series of lower performance rankings than he had received the previous year. Meanwhile, Savage alleges, several white candidates for positions with the SFD were promoted to various positions without similar training or strict adherence to Civil Service requirements and procedures. Savage also alleges that, in 2016, Conant ordered a District Chief superior to Savage to discipline him for failing to properly train a recruit, even though no investigation was conducted. By contrast, according to Savage, when he "brought charges against two subordinates . . . for disrespectful behavior and . . . disobeying a directive," "Conant let two months pass without taking any action" and ultimately did not discipline either of Savage's white subordinates. After Fire Commissioner Bernard Calvi replaced Conant in 2018, Savage approached Calvi in early 2019 about his ongoing concerns with discrimination and retaliation in the department. According to Savage, Calvi advised him "that if he wanted to be promoted to District Chief, he needed 'to leave the legal issue of residency outside of the department.'"

Blake similarly alleges racial discrimination in hiring practices at the SFD. He claims that, in 2016, he was passed over for a promotion to Captain in favor of a white non-resident who

was not required to fulfill certain Civil Service requirements for promotions, including interviews. Blake maintains that he was passed over again, in similar circumstances, when another position opened in 2017, and he claims that drug testing and written evaluations from superiors were not required as usual. After he complained about the lack of adherence to the SFD's own policies, he alleges that the SFD "changed its procedures to conform the rules to its haphazard approach to promotions." Also, he cites several instances where certain forms were not filled out or drug testing was not required of any applicant for promotions "because [the] SFD had already preselected its favored white candidate." Blake asserts that by not following the protocols in place, the SFD "inserted subjectivity into promotion decisions that the procedures were designed to minimize."

Savage and Blake also claim that the SFD had a hostile work environment where "racist and anti-Muslim rhetoric" was common. They cite numerous "social media posts targeting Blake and Savage . . . contain[ing] racist and anti-Muslim rhetoric and memes[,]" as well as derogatory comments and threats of physical violence directed at one or both plaintiffs on Facebook.³

³ Some of the social media posts were posted in unofficial, private SFD Facebook groups, while other social media messages were posted on individual SFD firefighters' personal pages.

The ugly social media comments -- each allegedly posted sometime between 2016 and 2020 by individual SFD employees -- included, among other things: an illustration of a father shooting his daughter, captioned "Muslim family values"; a manifesto-like explanation on why "racism in America is good"; references to Savage as "a savage"; a meme stating that because there are no more slaves or slaveowners in the United States, people should "GET OVER IT"; a repost advocating removal of all mosques from the country; a statement asserting that "STANDING UP AGAINST ISLAM DOES NOT MEAN YOU'RE A RACIST OR A BIGOT" but that "YOU'RE NOT AN IDIOT AND CAN SEE THE REALITY OF ISLAM AROUND THE WORLD"; and a picture of a pickup truck painted in blood captioned "[c]heck out the new Ram 'protester edition.'" In one set of comments, fellow firefighters suggested that if Savage were Deputy Fire Chief, "everyone would have to pray five times a day," and called Muslims "towel heads." Another such online post written by an anonymous Springfield firefighter referenced Savage and Blake's formal complaints, used various slurs in describing them, and called for violence against them, stating in pertinent part:

If I were you, I'd be worried if anyone is going to have my back in a pinch. For example how hard are these guys going to search for me if I'm ever overcome by smoke or fire. "Have I alienated myself in the name of personal gain,"? Why we gotta keep doing this just let me put my hands on you so you can keep my fucking name out of your mouth.

Blake was allegedly assaulted by another SFD firefighter in 2019 after that individual posted threatening messages against Blake on Facebook. Notably, several of the SFD staff posting the social media material held supervisory positions within the department, though none were in the direct line of command for either plaintiff.

B. Procedural History

In 2018, Blake and Savage filed the complaint in this case against the SFD, the City, former Fire Commissioner Conant and current Fire Commissioner Calvi alleging eight causes of action under federal and state law.⁴ They claimed that, from 2014 to 2017, the SFD had engaged in racial and religious discrimination and pursued "a persistent campaign of retaliation against [them] for complaining about discrimination, including denial of training[,]. . . . unfair evaluations[,]. . . . unwarranted disciplinary action[,]. . . . and investigating [violations of] non-existent rules and regulations to harass, intimidate, and frustrate [them]."

⁴ In their amended complaint, plaintiffs list the following eight causes of action: (1) discrimination in violation of Title VII of the Civil Rights Act; (2) discrimination in violation of MGL Chapter 151B; (3) violation of MGL Chapter 31, § 1(e); (4) unlawful retaliation; (5) negligent supervision; (6) intentional infliction of emotional distress; (7) constitutional equal protection; and (8) breach of contract.

In making these claims, Savage and Blake contended that all supervisors at the SFD were mandatory reporters of harassment and thus were required to protect all employees from harassment, including employees whom they did not directly supervise.⁵ Savage and Blake asserted that SFD supervisors not only failed to protect them from illegal harassment but some of them also participated in that harassment themselves. Following the parties' unsuccessful attempt to mediate the case, the defendants filed a motion to dismiss in July 2020. The district court granted the motion in part and denied it in part,⁶ leaving for trial only claims of

⁵ At trial, defendants disputed that the SFD's policy placed an affirmative obligation on supervisors to report harassment. During his testimony, Conant maintained that the objectionable social media postings were reported to the department and that an investigation was carried out. Although he declined to describe the policy as placing an "obligation" on supervisors, he also explained that, in his view, the relevant SFD policy about reporting harassment created a "duty" for employees to report harassment, apparently drawing a distinction that was not explained further.

⁶ The magistrate judge who tried the case with the parties' consent, see 28 U.S.C. § 636(c); Fed. R. Civ. P. 73(b), granted the motion to dismiss with respect to the following: (1) all claims against the SFD; (2) the Title VII discrimination claim against Conant; (3) the Title VII claim against the City for discrete acts of discrimination occurring before October 26, 2016 for Savage, and before May 4, 2017 for Blake; (4) all Chapter 151B claims premised on actions occurring prior to October 9, 2015; (5) the claim under MGL Chapter 31, § 1(e), which is a purely definitional section with no subsection (e) appearing therein; (6) the Title VII retaliation claim against Conant and Calvi; (7) the negligent supervision claim against Conant and the City; (8) the intentional infliction of emotional distress claim against Conant and the City; and (9) the breach of contract claim against Conant and the City. The claims relating to earlier dates were deemed outside the

discrimination, retaliation, and hostile work environment against some defendants⁷ under both MGL Chapter 151B and Title VII of the Civil Rights Act of 1964. By the time the trial commenced, the remaining federal claims were withdrawn and the plaintiffs declined to go forward with their claims against the individual defendants. The trial thus proceeded only on the claims of discrimination, retaliation, and hostile work environment under Chapter 151B against the City based on its vicarious liability for the actions of various supervisors, including Conant and Calvi, on or after October 9, 2015.

statute of limitations and hence not actionable. The plaintiffs did not appeal any part of the ruling described herein.

After the motion to dismiss stage, the four surviving causes of action were: discrimination in violation of Title VII against the City for discrete acts of discrimination occurring on or after October 26, 2016, for Savage, and on or after May 4, 2017, for Blake, and for hostile work environment (Count I); discrimination in violation of Chapter 151B against Conant, Calvi, and the City as to claims premised on actions that occurred on or after October 9, 2015, and for hostile work environment (Count II); unlawful retaliation in violation of Title VII against the City and unlawful retaliation in violation of Chapter 151B against Conant, Calvi, and the City (Count IV); and violation of the constitutional guarantee to equal protection against Conant, Calvi, and the City (Count VII).

⁷ Defendants moved to dismiss the claims against the SFD on the ground that the SFD is not a legal entity and it is not authorized to sue or be sued. In its memorandum granting the motion to dismiss in part and denying it in part, the court agreed that the SFD has "no legal existence or liability to suit separate from the City of [Springfield]." The plaintiffs also did not appeal from this ruling.

C. The Jury Trial

A nine-day jury trial was held in June 2024. In addition to themselves, the plaintiffs' witnesses included a lawyer who represented the City against Savage and Blake in their complaint to the Massachusetts Civil Service Commission, a former SFD firefighter, three current SFD firefighters, former Commissioner Conant, current Commissioner Calvi, former Deputy Fire Chief Glenn Guyer,⁸ a former SFD dispatcher, and a licensed clinical therapist who had provided therapy services for Savage. The municipal defendants cross-examined nearly all the plaintiffs' witnesses and followed up with testimony by the Springfield Director of Human Resources and Labor Relations.

In the presentation of their case, the defendants asserted that the City followed all established procedures to ensure that hiring decisions were free of bias and that the response by SFD officials to Savage and Blake's claims of discrimination and retaliation was reasonable. The defendants pointed out that none of the objectionable social media comments were posted on City-sponsored Facebook pages, and that all efforts were made to enforce the anti-discrimination policies in place at

⁸ This witness was the only other candidate who took the exam at the same time as Savage to apply for the Deputy Chief position, leading to Savage's initial allegations of discrimination by the SFD. After taking the exam, this individual was promoted to fill the Deputy Chief position temporarily and was later promoted on a full-time basis.

the SFD, including by disciplining some of those who posted. The defendants also noted that at least some of the conflict in the department stemmed from personal disputes between Savage and Blake and individual firefighters, and that the City responded appropriately to those disputes by disciplining firefighters where necessary.

The jury found in favor of the defendants on all counts. This timely appeal followed.

II.

Savage and Blake argue that the court erred when it (1) failed to answer a question posed by the jury during its deliberations, (2) failed to provide a limiting instruction regarding the admission into evidence of decisions by the Massachusetts Civil Service Commission, (3) failed to give a limiting instruction clarifying that the social media comments at issue were not protected by the First Amendment and allowed defendants to improperly assert a First Amendment defense, and (4) improperly instructed the jury on employer liability for harassment committed by supervisors under MGL Chapter 151B.

We discuss each alleged error in turn, first detailing the relevant events at trial and then laying out the applicable legal standards before providing our assessments of plaintiffs' claims.

A. Failure to Answer a Jury Question on Promotion Lists

1. Events at Trial

As described earlier, Blake testified that, when he took an exam to be eligible for promotion to Captain, he faced similar circumstances to Savage's experience in seeking promotion to Deputy Chief. See supra Section I.A. Blake stated that he did not receive the promotion, even though the only other eligible candidate was a nonresident, and that this was evidence of retaliation for his past complaints of discrimination. Blake testified that "[t]he opportunity was for a promotional captaincy, which ended I believe . . . in 2018. There was one position. I was number two. The person, individual was a nonresident. His name was Lieutenant Michael Kneeland."

During their deliberations, the jurors submitted a question asking, "What year did Blake become second on [the] captain's exam to a nonresident?" In an exchange outside the jury's presence, the court asked counsel whether Blake had testified to the answer during trial, and the parties provided conflicting answers. Defense counsel insisted that there was no testimony about this fact. Plaintiffs' counsel insisted that it did come in as evidence during testimony, "[n]ot a specific date, but the range that he was on a 2016 to 2018 list, which he appeared second," and that was sufficient for the court to answer the question.

Observing that the court "can[not] review the transcript" and that the jury had been instructed that they could not have a transcript, the court decided against providing a substantive response to the jury. In relevant part, the court explained its decision to the parties as follows:

I've looked at my notes pretty carefully, and I've taken careful notes of Mr. Blake's testimony, and my notes don't show any testimony by Mr. Blake related to him being second on a captain's exam to a nonresident. So I think I'm going to say that their memory would have to control, and I'm inclined to remind them of the limiting instruction that they're not to accept the contents of any of the complaints for their truth. Because I do have a concern that this specific question could arise from the contents either of the MCAD complaints which were admitted into evidence or of the internal complaints which we had instructed the jury are not to come in for their truth.

The plaintiffs did not object to the court's decision.

After the jury was brought back into the courtroom, the court explained that the jurors would have to rely on their collective memory concerning the timing of Blake's second-place position on the eligibility list for Captain. The court also reminded the jurors that, in evaluating Savage and Blake's claims, they should not consider "the MCAD charges and internal complaints made by the plaintiffs . . . for the truth of the matters asserted in those complaints."

2. Legal Standards

We ordinarily review a court's response to a jury message for abuse of discretion. See United States v. Velazquez-Fontanez, 6 F.4th 205, 228 (1st Cir. 2021). However, plain error review applies to such claims when they are unpreserved. See Menninger v. PPD Dev., L.P., 145 F.4th 126, 136-37 (1st Cir. 2025). A determination of plain error is limited to exceptional cases and generally requires the party seeking relief to show that the court's handling of the jury inquiry (1) involved an error; (2) the error was plain; (3) the error likely altered the outcome of the trial; and (4) the error was "sufficiently fundamental to threaten the fairness or integrity or public reputation of the judicial proceeding." Gray v. Genlyte Grp., Inc., 289 F.3d 128, 134 (1st Cir. 2002) (citing United States v. Olano, 507 U.S. 725, 735-36 (1993)).

Although courts are ordinarily required to give counsel an opportunity to suggest responses to jury messages, a court is not required to accept counsel's suggestion. See United States v. Sabetta, 373 F.3d 75, 78 (1st Cir. 2004).⁹ The appropriate response

⁹ We have explained that the

preferred practice for handling a jury message should include these steps: (1) the jury's communicate should be reduced to writing; (2) the note should be marked as an exhibit for identification; (3) it should be shown, or read fully, to counsel; and (4) counsel should be given an opportunity to suggest an

is left to the court's discretion, after the court has weighed "the reasonableness of the request, the ease or difficulty in compliance, and what is likely to be gained or lost." United States v. Akitoye, 923 F.2d 221, 226 (1st Cir. 1991). That said, courts must exercise "extreme caution in answering questions from juries so as not to usurp the jury's fact finding role." Sabetta, 373 F.3d at 80.

In line with this discretionary approach to jury questions, we have previously found no abuse of discretion when trial courts rejected jury requests to read back portions of testimony during their deliberations. See Velazquez-Fontanez, 6 F.4th at 227-28 (upholding court's decision to ask the jury to "rely on [its] collective memory of the witnesses' testimonies" in response to a readback request); United States v. Vázquez-Soto, 939 F.3d 365, 377-378 (1st Cir. 2019) (observing that a jury "does not have the right to a rereading" of testimony (quoting United States v. Aubin, 961 F.2d 980, 983 (1st Cir. 1992))). We have noted that "a district court does not abuse its discretion by

appropriate rejoinder. If the note requires a response ore tenus, the jury should then be recalled, the note read into the record or summarized by the court, the supplemental instructions given, and counsel afforded an opportunity to object at side-bar.

Sabetta, 373 F.3d at 78.

requiring the jury to proceed as most juries usually proceed." Velazquez-Fontanez, 6 F.4th at 228.¹⁰

3. Analysis

Savage and Blake contend that the district court's "fail[ure] to accurately respond" to the jury's question "depriv[ed] the jury of the opportunity to fully consider" Blake's testimony that he was second on a promotional list to a non-resident in 2018. They argue that the jury's question "aimed at the heart of Blake's claims" and that the court, by instructing the jury to rely on its collective memory, prejudiced Blake.

Savage and Blake's contentions are unavailing. Their failure to object when the district court told the parties how it planned to respond to the jury's question requires them to demonstrate plain error in the court's ruling. See Menninger, 145 F.4th at 136-37. They cannot meet that standard. Although the court appears to have erroneously recalled that there was no testimony concerning the timing of Blake's pursuit of a promotion to Captain, the court did not have a transcript available and had previously told the jurors that they would not have access to a

¹⁰ We have set forth here the standards applicable to jury messages in the criminal context, as we have found no helpful caselaw from the civil context in our circuit or other circuits to guide our analysis. Neither did the parties in their briefing. However, we see no basis for excluding these requirements from civil cases, where the stakes in the proper handling of jury messages are also quite high.

transcript. Importantly, the court did not suggest that the record lacked evidence on the timing of Blake's status as second on the Captain's list, but it simply told the jurors that their memory of the evidence would have to control. To ensure that they did not rely on the contents of the plaintiffs' MCAD or other formal complaints, rather than their recollection of the testimony, the court reminded them of the limited purpose for which those complaints had been introduced into evidence.

In these circumstances, we see no plain error in the court's response to the jury's inquiry. The court reasonably relied on its own notes of the testimony and gave the oft-used instruction that the jurors needed to rely on their own memory of the evidence. Indeed, rather than offering the trial court a different way to handle the situation, plaintiffs simply acquiesced to the court's approach.¹¹ We thus conclude that the court's handling of the jury inquiry provides no basis for disturbing the verdict in favor of the defendants.

¹¹ For the first time on appeal, plaintiffs suggest that the district court "could have easily reviewed the audio recording of Blake's testimony or allowed his counsel to review it to identify the relevant section for the court." Regardless of whether such approaches were feasible, plaintiffs cannot succeed on appeal by invoking options they did not ask the trial court to consider.

B. Failure to Give a Limiting Instruction on the Civil Service Decisions

1. Events at Trial

The parties debated at trial the relevance of three decisions issued by the Massachusetts Civil Service Commission on complaints submitted by Blake to challenge as retaliatory certain disciplinary actions taken against him.¹² Defendants sought to introduce these decisions, while plaintiffs sought to exclude them.¹³ On the first day of trial, the district court declined to admit the decisions themselves as evidence and instead ruled that the Commission's determinations could come in only through witness testimony. However, when plaintiffs' counsel questioned Blake on the third day of trial about the decisions, the court said:

If you are asking questions to take issue with the decision of the Civil Service, then you are opening the door to admission of the decision. . . . The more questions that Mr.

¹² These decisions included: (1) a 2015 determination that the City had "just cause" to discipline Blake after he received paid leave to attend a Union meeting that was canceled without him informing the SFD; (2) a 2018 arbitration decision rejecting Blake's contention that a two-day suspension issued against him for harassing another firefighter was retaliatory; and (3) a 2022 determination that again found the City had "just cause" to discipline Blake with a four-day suspension after he complained against the same firefighter involved in the 2018 case and found that Blake "attempted to besmirch the reputation of a fellow officer . . . in an apparent retaliatory manner."

¹³ Plaintiffs expressed concern at trial that the jury might "assume or confuse the decisions, the issues in those forums with the issue that's before them now," in part because one of the Civil Service decisions addressed Blake's claims of retaliation, but not discrimination or hostile work environment.

Blake answers about the events in an attempt to excuse or explain what occurred, in contravention to what the Civil Service ruled . . . then I will admit the Civil Service decision.

The plaintiffs continued asking Blake questions related to the circumstances leading up to the discipline in question. Over plaintiffs' objection, the court then invited defense counsel to move for the admission of the decisions into evidence. The defendants made the request, and the court granted the motion.

A week later, just after the seventh day of trial, Savage and Blake submitted a motion in limine asking the court to provide a limiting jury instruction stating that the Civil Service decisions "did not address the hostile work environment questions currently being presented to the jury in this case, and in no way preclude the jury from issuing its verdict on the questions presented before them." The next day, the court granted the motion in part and denied it in part, declining to give a limiting instruction in the form proposed by plaintiffs. Instead, in a colloquy outside the jury's presence, the court proposed different limiting language, stating:

I reflected further on [plaintiffs'] request with respect to Civil Service decisions concerning Mr. Blake, and I had added . . . two sentences. "You have before you certain Civil Service decisions concerning discipline imposed on Mr. Blake. While you may take the decisions into consideration, it remains up to you to determine whether the discipline was retaliatory." So that's the addition . . . in

response to [plaintiffs'] request for an instruction. It's not a limiting instruction per se, but I think it adequately conveys as much as the [c]ourt is willing to do.

Immediately after the court proposed this instruction, plaintiffs' counsel objected to it, reiterating the argument made in the motion: "[The instruction] should go further and inform the jury that the Civil Service decision[s] did not address the issue of discriminatory harassment or retaliatory harassment. So just wanted to preserve those for the record."¹⁴

During this exchange, the court advised counsel to summarily restate their objections before the jury when prompted by the court. The court said:

[A]fter I read the instructions to the jury, I will ask you, Mr. Lizana [plaintiffs' attorney], do you want to preserve the objections that you made to the [c]ourt earlier today, and you'll say yes. The same to the defendants, do you want to preserve the objections that you made earlier to the form of the jury instructions and the verdict form. You'll say yes. In my view, that record -- I don't think the First Circuit could have any quarrel that we've adequately preserved the parties' objections to the instructions and to the verdict form. . . . And we won't sort of be rehashing those objections in front of the jury.

¹⁴ Plaintiffs appear to have misspoken here. One of the Civil Service decisions did indeed address Blake's retaliation claims, see supra note 13, but no decision explicitly addressed discrimination or hostile work environment.

During closing argument, defense counsel accused Blake of a "lack of credibility" by referencing inconsistencies between Blake's testimony at trial concerning the events leading to the disciplinary actions against him and his testimony to the Civil Service Commission regarding those events as described in the Civil Service decisions. Plaintiffs' counsel did not object to the argument. After the jury was instructed, plaintiffs' counsel -- as the court had directed -- renewed the earlier objections without specific reference to the Civil Service decisions. The court then stated: "I am assuming that the objections voiced earlier during our supplemental charge conference this morning are asserted in response to the jury instructions. Mr. Lizana, is that correct?" Counsel replied, "Yes, your Honor."

2. Legal Standards

A party objecting to a jury instruction or the failure to give an instruction must "do so on the record, stating distinctly the matter objected to and the grounds for objection" to preserve the underlying issue for appeal. Fed. R. Civ. P. 51(c)(1); see also Menninger, 145 F.4th at 136-37. Our adherence to this "object-or-forfeit" rule is "quite strict," Menninger, 145 F.4th at 136, and we have held that, even if an objection is initially made in detail, the requesting party must object again after the court gives instructions but before the jury deliberates,

Foley v. Commonwealth Elec. Co., 312 F.3d 517, 521 (1st Cir. 2002); see also DeCaro v. Hasbro, Inc., 580 F.3d 55, 60 (1st Cir. 2009).

Preserved claims of error in jury instructions are reviewed under a split standard. Franchina v. City of Providence, 881 F.3d 32, 55 (1st Cir. 2018). We review de novo whether the instructions "capture the essence of the applicable law," and we review for abuse of discretion the trial court's "phraseology in crafting" the instructions. Id. A court retains the discretion to refrain from using the specific language suggested by the parties, as long as the instructions do not distort the applicable law, mislead the jury, or prejudice the requesting party. DeCaro, 580 F.3d at 63 (stating that "[a] trial judge has broad discretion in deciding how best to communicate complicated legal rules to a lay jury"); Elliott v. S.D. Warren Co., 134 F.3d 1, 6, 7 (1st Cir. 1998) (cautioning that the court's discretion is not unbridled, and jury instructions should not "unduly complicat[e] matters"). An instructional error is prejudicial when it "adversely affects the jury verdict and the substantial rights of the objecting party." Thomas & Betts Corp. v. New Albertson's, Inc., 915 F.3d 36, 52 (1st Cir. 2019) (citation modified) (quoting Davignon v. Clemmey, 322 F.3d 1, 9 (1st Cir. 2003)).

3. Analysis

Savage and Blake argue that the district court's version of their requested limiting instruction was inadequate because the

court failed to explicitly state that the Civil Service decisions did not consider their claims of "discriminatory harassment or retaliatory harassment."¹⁵ Without such language, they assert, the jury could have inferred that the decisions undermined the merits of their claims when in fact the decisions did not address them at all. They argue that the instruction thus misled the jury about the weight and importance of the decisions, prejudicing them.

We disagree. First, Savage and Blake mistakenly state that the Civil Service decisions did not consider retaliation. The 2018 arbitration decision and the 2022 determination each reference Blake's allegations that the SFD's discipline against him was retaliatory and both reject this contention. Second, accepting that plaintiffs did not forfeit their objection,¹⁶ we see little impact from the district court's rejection of their request

¹⁵ Savage and Blake also argue that the defendants mischaracterized the decisions in their closing arguments, which misled the jury, but they did not object to defendants' closing arguments on this score, so we do not address that argument here. See In re Fin. Oversight & Mgmt. Bd. for P.R., 110 F.4th 295, 324 n.24 (1st Cir. 2024) (declining to consider defendants-appellees' arguments raised for the first time on appeal).

¹⁶ Ordinarily, "it is not enough for counsel in renewing an objection merely to refer back generically to objections made before the charge." Foley, 312 F.3d at 521 (alteration omitted) (quoting Gray, 289 F.3d at 134). Here, however, the court specifically asked the parties to be succinct in renewing their objections after the court instructed the jury. Plaintiffs did not fail to object in a timely way but merely abided by the district court's pragmatic request for a renewed objection in summary fashion. We decline to treat plaintiffs' instructional challenge as unpreserved in these circumstances.

for additional language to clarify the relevance of the Civil Service decisions for the jury's consideration. The court told the jury that it was up to them to decide if the defendants' actions toward Blake were retaliatory, even though the Civil Service Commission made its own determinations on retaliation. The court's instruction thus accomplished the plaintiffs' goal: to inform the jury that the Civil Service Commission decisions should not color the jury's interpretation of the trial evidence. We therefore find no abuse of discretion in the district court's approach to this issue.¹⁷

C. Failure to Give a Limiting Instruction on the First Amendment

1. Events at Trial

Both before and throughout the trial, plaintiffs took issue with defendants' anticipated assertion of a so-called "First Amendment defense." That is, plaintiffs sought to foreclose any argument that the constitutional right to free speech encompasses

¹⁷ Savage and Blake additionally assert on appeal that "the absence of a limiting instruction also created an imbalance in the [d]istrict [c]ourt's treatment of the evidence," referring to the limiting instructions the court provided for certain MCAD and EEOC complaints in evidence and comparing that provision with the lack of a limiting instruction for the Civil Service decisions. They briefly assert that this "undermined the fairness of [their] trial" but do not develop their argument further. We therefore deem the argument waived. See Tax-Free Fixed Income Fund for P.R. Residents, Inc. v. Ocean Capital LLC, 137 F.4th 6, 24 (1st Cir. 2025) ("[A]rguments raised only in a footnote or in a perfunctory manner are waived." (quoting P.R. Tel. Co. v. San Juan Cable LLC, 874 F.3d 767, 770 (1st Cir. 2017))).

the right to post racist social media comments and for which the City could not discipline the employees. Prior to trial, Savage and Blake moved to preclude the defendants from arguing such a defense. See Savage v. City of Springfield, No. 3:18-cv-30164-KAR, 2024 WL 2883489, at *1 (D. Mass. June 7, 2024). At a hearing on pretrial motions, the parties debated whether the objectionable posts qualified as matters of public concern, meriting a First Amendment analysis. See id. at *2. Defendants also asserted that the SFD conducted appropriate investigations, and that, in any case, the posts did "not appear to be directed at either [p]laintiff or to be motivated by their race or religion, and that the posts are akin to offensive graffiti on workplace toilet stalls insufficient to establish harassment severe enough to support a hostile work environment claim." Id. The district court denied plaintiffs' pretrial motion without prejudice to their re-raising the issue at trial, when the court could assess the propriety of the defense in the context of the evidence presented to the jury. See id. (reasoning that the court could not "conduct a Pickering balance test in an evidentiary vacuum").¹⁸

¹⁸ The Pickering balancing test involves "arriv[ing] at a balance between the interest of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968).

Plaintiffs' counsel raised the issue again during a bench conference on the first day of trial, arguing that the defendants should be precluded from wielding a First Amendment argument because, "if they're going to argue a legal issue before the jury, then that could be a mess." Plaintiffs' counsel conceded that it would be "fair" for the defendants to suggest that First Amendment concerns "went into [the defendants'] thought process as to how [they] responded," but that it would be "a step too far" to allow the defendants to rely upon a full "First Amendment defense" -- i.e., informing the jury that the defendants could not have disciplined the employees for this type of speech.

In response, the court said it would neither instruct the jury nor permit the defendants to tell the jury that the social media posts were constitutionally protected free speech "as a matter of law," but that defense counsel might be permitted to mention certain "constraints" in disciplining the employees who posted social media comments based on First Amendment considerations.¹⁹ The court suggested that as the trial developed, it would be willing to hear argument on the First Amendment issue "on a question-by-question basis."

¹⁹ The judge remarked, "I'm not going to tell the jury that these posts are protected, but I'm not going to preclude the [C]ity from saying we have these limits on our ability to . . . discipline, control."

The parties agree that no direct reference was made to the First Amendment until the defendants' closing argument, when counsel stated:

Joe Conant testified that when [the social media posts] were brought to his attention, he knew that this was a complex issue There's a lot of competing issues that come into play Things that I may find deeply, deeply offensive, someone else may say: That's my right to have political speech. That's my political belief. Things that I might find offensive, people might say: That's part of my religion and I have a right to believe those things So Joe Conant did the responsible thing. He reached out to the HR department and he said: I need some help There's no clearcut answers on how we deal with people's private speech in a public or semipublic forum. We're all living through the experiment with social media colliding with the First Amendment colliding with hate speech. It's an issue, perhaps the issue of our time.

Plaintiffs' counsel did not object to the defendants' closing argument.

2. Legal Standards

In addition to the principles governing review of a district court's chosen language for a jury instruction, set forth above, plaintiffs' First Amendment-based claim of error is subject to the limitations of plain error review. As we have described, the district court put the parties on notice that, as the trial developed, the court would be willing to hear argument on the First Amendment issue. Plaintiffs made no objection to the First

Amendment content in the defense's closing argument, and their claim of error is thus unpreserved and must satisfy the plain error standard. See Menninger, 145 F.4th at 136-37.

3. Analysis

We see no plain error in the court's handling of the First Amendment issue. Defense counsel's reference to the First Amendment in the closing argument aligned with the approach the plaintiffs, on the first day of trial, had conceded would be appropriate. Plaintiffs said it would be "fair" for the defendants to suggest that First Amendment concerns "went into [their] thought process" as they considered how to respond to the social media posts. In the closing, defendants' counsel merely observed that the issue was a difficult one, noting the uncertainty surrounding "how we deal with people's private speech in a public or semipublic forum" and the challenge of "social media colliding with the First Amendment colliding with hate speech." In effect, this closing left to the jury the task of balancing First Amendment concerns with the plaintiffs' right to a harassment-free workplace.

In these circumstances, we see no error in either the district court's rejection of plaintiffs' original request for an instruction to bar a First Amendment defense or its failing sua sponte to provide a limiting instruction following the defense's closing argument.

D. The Jury Instruction on MGL Chapter 151B

1. Events at Trial

Plaintiffs' theory of liability under MGL Chapter 151B was premised on the City's vicarious liability for the alleged discrimination, retaliation, and hostile work environment carried out, or tolerated, by various supervisors employed at the SFD. Plaintiffs argued that the City was strictly liable for the misconduct of any supervisor who committed, or had knowledge of, the harassment, while the defendants argued that the City could only be held strictly liable for misconduct by plaintiffs' direct supervisors. According to the defendants, the City could be found liable for the actions of employees other than plaintiffs' direct supervisors only upon a showing of negligence -- i.e., only if the City knew, or should have known, about the misconduct and failed to take prompt action to stop it. The parties agreed that the negligence standard applied to the City's responsibility for the actions of non-supervisors. However, the parties disagreed on the degree of authority an employee needed to exert over another employee to constitute a supervisory relationship subject to strict liability.

In a pretrial submission, the plaintiffs requested the following jury instruction: "A supervisor or manager need not be the plaintiffs' direct supervisor or exercise supervisory

authority over the plaintiff to hold the City liable for retaliatory or discriminatory conduct."

When the court distributed the draft instructions to the parties on the seventh day of trial, it explained that it had not adopted plaintiffs' proposed language and that, based on its view of Massachusetts law, it would instruct the jury that if an individual "engaged in any kind of harassing activity," they would need to "have exercised supervisory authority over the plaintiff or . . . refused to protect the plaintiff . . . from harassment" for strict liability to attach.

Later the same day, defendants requested that the instructions include a statement that there was no evidence that the individuals who posted the social media comments were "supervisors or in a position to direct the activities of the plaintiff, such that the [C]ity would be vicariously liable for those actions." The court rejected this amendment, explaining that it did not "want to . . . be that explicit with the jury" and would leave it "up to counsel to make the argument about . . . where liability falls based on" whether the actions at issue were taken by individuals who had supervisory authority over the plaintiffs.²⁰

²⁰ In giving its reasoning, the district court noted that it had included language in the instructions from a decision of the Massachusetts Supreme Judicial Court that -- according to the district court -- held that "somebody who refuses to protect the

On the eighth day of trial, before the jury entered the courtroom, the court gave the parties the final version of the jury instructions and discussed changes it had made to the draft they had reviewed the previous day. Plaintiffs again objected to the court's refusal to instruct the jurors that strict liability could attach to the conduct of supervisors who lacked direct supervisory authority over the plaintiffs, to which the court responded, "Sure." Defendants then proposed the following substitution for the court's language on supervisory authority:

If a person with supervisory responsibility over the plaintiff is responsible for the hostile work environment, the [C]ity is liable, whether or not the [C]ity knew about or had the opportunity to stop the conduct or take legal action. On the other hand, employees who have no supervisory authority over the plaintiffs are treated as any other coworker. The [C]ity can only be liable for [a] hostile work environment caused by such employees if the [C]ity knew or should have known about the harassment, yet failed to take prompt and adequate measures to address it.

plaintiff from harassment could be deemed . . . a supervisor." However, the decision referenced, College-Town, Div. of Interco, Inc. v. Mass. Comm'n Against Discrimination, 508 N.E.2d 587, 593 (Mass. 1987), did not designate as a supervisor anyone who refuses to protect co-workers from harassment but noted only that supervisors have the power to refuse to provide such protection, among other ways in which they can exert control over their subordinates. See id. (stating that the power wielded by a supervisor could range from "discharge to assignment of work, particularly exacting scrutiny, or refusal to protect the employee from coworker harassment"). This misunderstanding, which broadened the definition of a supervisor, was advantageous to the plaintiffs, and it therefore does not impact our evaluation of the vicarious-liability instruction.

The court agreed to the defendants' proposed revision and asked plaintiffs' counsel if there was any objection to this change. Plaintiffs' counsel replied: "No."

The final instructions explained vicarious liability in two places. The first reference was in the introductory portion of the instructions and was labeled "Liability." It read, in pertinent part, as follows:

Before instructing you on the [p]laintiffs' claims, I will explain something called vicarious liability. The City of Springfield is not a human being, obviously. It acts through the actions of its employees. The City, like any employer, is responsible for and liable for the conduct of its supervisors on whom the City confers authority. Therefore, the City can be liable for the conduct engaged in by supervisors, whether or not it knew about the conduct and whether or not it had any opportunity to stop the conduct or take remedial action. The City is also liable for discriminatory acts done by others where the supervisor knew or should have known about the discriminatory conduct but failed to take prompt remedial action and did not take adequate steps to remedy the situation. As a result, when you are asked to consider whether the City is liable for the claims I am about to explain, you should consider the conduct engaged in by its supervisors.²¹

(Emphasis added). This first section was unchanged from the draft jury instructions.

²¹ As we will explain, the underlined reference to supervisor knowledge is incorrect under Massachusetts law. See infra Section II.D.3.

The second reference to vicarious liability, labeled "Agency or Vicarious Liability of the City," was in a section of the instructions setting forth the elements of a prima facie case for a retaliatory hostile work environment claim under MGL Chapter 151B. Modified somewhat from the draft the parties had previously seen, this instruction, in pertinent part, read as follows:

As to the fifth element, the City is vicariously liable for a hostile work environment differently depending on whether it was created by supervisors or coworkers within the Fire Department. The City is strictly liable for a hostile work environment if the hostile work environment is created by supervisors. A supervisor is someone who had the authority to affect the terms and conditions of the [p]laintiff's employment, including the power to hire, assign work, fire, demote, promote, transfer, or discipline, or who refused to protect the [p]laintiff from coworker harassment. If a person with supervisory responsibility over the [p]laintiff is responsible for the hostile work environment, the City is liable whether or not the City knew about or had the opportunity to stop the conduct or take remedial action. On the other hand, employees who have no supervisory authority over the [p]laintiffs are treated as any other coworker. The City is liable for a hostile work environment created by such employees if the City knew or should have known about the harassment, yet failed to take prompt and adequate measures to address it.²²

(Emphasis added). Shortly after the court delivered its instructions to the jury, consistent with the court's request, see

²² The underlined portions of the final jury instructions were modified from the initial draft instructions.

supra Section II.B.1, the parties summarily reaffirmed the objections they had made that morning.

2. Vicarious Liability Under MGL Chapter 151B

Savage and Blake argue that by excluding their proposed jury instruction that strict liability can apply to indirect supervisory relationships (i.e., "A supervisor or manager need not be the plaintiffs' direct supervisor or exercise supervisory authority over the plaintiff to hold the City liable for retaliatory or discriminatory conduct"), the court conflated the supervisor standard of vicarious liability and the negligence standard that applies to coworkers. We again bypass the question of whether plaintiffs properly preserved this issue for appeal because of the district court's direction to reiterate objections concisely in front of the jury.²³ See supra Section II.B.1.

²³ We note that plaintiffs' summary objection arguably was inadequate for the circumstances, even given the district court's direction to be concise. After the court refused to instruct the jury that a supervisor does not need to have "a direct supervisory relationship with the plaintiffs in order to be held strictly liable," defendants proposed, and the court accepted, a revision to the instruction on "Agency or Vicarious Liability of the City." Plaintiffs' counsel then stated that they had no objection to the revised instruction, which addressed the question of supervisory liability. Hence, when plaintiffs objected summarily after the jury was instructed, they necessarily left ambiguous "the matter objected to and the grounds for objection." Fed. R. Civ. P. 51(c)(1).

In any event, as we explain below, even assuming that plaintiffs' acceptance of the revised instruction did not render their unelaborated objection inadequate, the claim of error fails.

We review whether jury instructions "capture the essence of the applicable law" de novo, while we review the court's wording in instructions for abuse of discretion. Franchina, 881 F.3d at 55. As explained above, see supra Section II.B.2, as long as the instructions do not distort the applicable law, mislead the jury, or prejudice the requesting party, a court has discretion to refrain from using specific language suggested by the parties. See DeCaro, 580 F.3d at 63.

Under MGL Chapter 151B, employers are strictly liable for the harassment of employees by supervisors. Noviello v. City of Boston, 398 F.3d 76, 95 (1st Cir. 2005), abrogated on other grounds by Stratton v. Bentley Univ., 113 F.4th 25 (1st Cir. 2024); College-Town, 508 N.E.2d at 591-94. As we concluded in Noviello, a "supervisor" for purposes of vicarious liability under MGL Chapter 151B must be someone with the actual ability to exercise supervisory powers over a victim, not just a person with general supervisory status that has no such reach. See 398 F.3d at 95-96 (limiting strict liability to "those who are entrusted with actual supervisory powers" (quoting Parkins v. Civil Constructors of Ill., Inc., 163 F.3d 1027, 1033 (7th Cir. 1998))). If alleged harassers do not have sufficient supervisory authority over a given plaintiff, they are treated as coworkers and the employer is subject to a "negligence" standard of liability. Id. at 95-96. Under that standard, an employer may be held liable for harassment

by a coworker only if the employer knew or should have known about the harassment but failed to take prompt action to stop it. Id. at 95 (citing Crowley v. L.L. Bean, Inc., 303 F.3d 387, 401 (1st Cir. 2002) (Title VII standard); College-Town, 508 N.E.2d at 593 (Chapter 151B standard)). Whether the applicable standard is for supervisors or coworkers, Chapter 151B specifies that the statute "shall be construed liberally for the accomplishment of its purposes" concerning discriminatory practices. Mass. Gen. Laws ch. 151B, § 9; see also Cuddyer v. Stop & Shop Supermarket Co., 750 N.E.2d 928, 938 (Mass. 2001).

3. Analysis

As we earlier noted, Savage and Blake assert that the district court improperly conflated supervisory and coworker harassment in its "Liability" instruction on vicarious liability, which was part of the introductory portion of the jury instructions. They point to the court's statement that the City's liability arises if "the supervisor knew or should have known about the discriminatory conduct" of others -- which states the negligence standard for non-supervisors rather than the strict liability responsibility of supervisors. Plaintiffs, however, take this portion of the instruction out of context. The sentences immediately preceding the language they cite lay out the strict liability standard for supervisors and tell the jurors that "[t]he City, like any employer, is responsible for and liable for the

conduct of its supervisors on whom the City confers authority. Therefore, the City can be liable for the conduct engaged in by supervisors, whether or not it knew about the conduct and whether or not it had any opportunity to stop the conduct or take remedial action."

We recognize that the district court incorrectly set forth the negligence standard for non-supervisory employees when it stated that the City is liable "for discriminatory acts done by others where the supervisor knew or should have known about the discriminatory conduct but failed to take prompt remedial action." The court should have stated that the employer -- i.e., the City -- can be liable for acts done by others where the employer knew or should have known about the discriminatory conduct. Noviello, 398 F.3d at 95. However, given the immediately preceding statement clearly setting forth the strict liability standard for supervisors and the later instruction on vicarious liability, see supra Section II.D.1, we cannot conclude that the court's mistaken reference to supervisor knowledge in this portion of the instructions misled the jury about the City's strict liability for the conduct of supervisors.

Importantly, the instructions in the section labeled "Agency or Vicarious Liability of the City" expressly define the scope of supervisory authority needed to trigger vicarious liability. That instruction highlights the strict liability

standard for those with supervisory authority over the plaintiff, using Noviello and College-Town to define a supervisor by his or her powers over the plaintiff.²⁴ The instructions then clearly differentiate the strict liability standard for supervisors and the coworker negligence standard:

If a person with supervisory responsibility over the [p]laintiff is responsible for the hostile work environment, the City is liable whether or not the City knew about or had the opportunity to stop the conduct or take remedial action. On the other hand, employees who have no supervisory authority over the [p]laintiffs are treated as any other coworker. The City is liable for a hostile work environment created by such employees if the City knew or should have known about the harassment, yet failed to take prompt and adequate measures to address it.

These instructions properly state the law and did not impose any additional burden of proof on Blake and Savage. We therefore reject the claim of error concerning the vicarious liability instruction.

III.

In summary, we find no abuse of discretion in the court's handling of the question posed by the jury or its refusal to provide plaintiffs' proposed limiting instruction on how the jury

²⁴ As quoted above, the court stated that "[a] supervisor is someone who had the authority to affect the terms and conditions of a [p]laintiff's employment, including the power to hire, assign work, fire, demote, promote, transfer, or discipline, or who refused to protect the [p]laintiff from coworker harassment."

should consider the Civil Service decisions. We find no plain error in the court's decision against giving a limiting instruction stating that the challenged SFD speech was not protected by the First Amendment. Finally, we find no reversible legal error in the instruction the court gave to the jury on employer liability under MGL Chapter 151B. We accordingly affirm the judgment in favor of defendants.

So ordered.