UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

KATHLEEN URADNIK, Plaintiff, v. INTER FACULTY ORGANIZATION, ST. CLOUD STATE UNIVERSITY, BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGES AND UNIVERSITIES, Defendants.	Case No. 0:18-cv-01895-PAM-LIB

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RULE 59(e) MOTION TO VACATE THE JUDGMENT

The Court should vacate its order of December 5, 2019, issuing summary judgment on Dr. Uradnik's second cause of action for First Amendment discrimination, and the resulting judgment of December 6, 2019, in Defendants' favor. The order reflects apparent confusion about the nature of that cause of action and its presence in Dr. Uradnik's Complaint. In any event, the Court's observation that Dr. Uradnik "must file an amended complaint," Summary Judgment Order, ECF No. 96, at 4, requires Rule 59(e) vacatur to allow her to do so. The Court should either vacate its judgment and deny the Defendants' dispositive motions or vacate and grant Dr. Uradnik leave to amend her Complaint.

ARGUMENT

I. The Court Should Vacate Its Order and Judgment

Rule 59 grants a district court "power to correct its own mistakes in the time period immediately following entry of judgment." *Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir. 1998). This rule reflects the policy that "manifest errors or law or fact" (or even "changes of heart") are best identified and corrected by the trial court rather than by the court of appeals. *See Id.* at 1286–87 (quotation marks omitted).

The Court's order reflects a manifest error of law and fact about the nature of Dr. Uradnik's second cause of action, Count II. The order called this cause of action a "Compulsory Association" claim and identified it as asserting the same argument "[t]his Court previously found [has] 'no likelihood of success on'" at the preliminary-injunction state. Summary Judgment Order 4. But unlike Count I, which challenged Minnesota's "exclusive representation" law and was raised in her preliminary-injunction motion, Count II is a First Amendment-discrimination claim, *see* Complaint, ECF No. 1, ¶¶ 60–69, and it was not raised in her preliminary-injunction motion, *see* Pl's PI Mem., ECF No. 19, at 4 n.1 ("Dr. Uradnik does not seek a preliminary injunction on Count II at this time.").

Equally erroneous is the order's finding that Dr. Uradnik's Complaint "is silent about this alleged deprivation." Summary Judgment Order 5. In fact, Dr. Uradnik's Complaint devoted at least 20 paragraphs to supporting Count II. *See* Complaint ¶¶ 4, 26–38, 48–49, 60–69; *see also id.* Prayer for Relief ¶¶ (B) and (E).

Those paragraphs asserted that Defendants maintain "an extensive set of search, service, and governance committees" that exercise "significant influence over affairs at the University" and that "[t]his system unlawfully allocates state-granted benefits and state-imposed burdens on the basis of political association" by excluding non-union faculty from committee positions and the benefits associated with those positions. *Id.* ¶¶ 4, 28–29. The Prayer for Relief sought a declaration "that Defendants' discrimination against non-members of the Union impermissibly abridges the Plaintiff's First Amendment speech, petitioning, and associational rights" and "an injunction barring Defendants from discriminating against non-members of the Union." *Id.*, Prayer for Relief ¶¶ (B) and (E). These remedies are distinct from those associated with Count I.

Count II, unlike Count I, challenges discrimination that amounts to an unconstitutional condition on eligibility for government employment and other benefits. Presumably, no party disagrees that it would violate the First Amendment for St. Cloud State University (SCSU) to fire or decline to hire faculty members based on their choice to join or not join the Inter Faculty Organization (IFO). On the other hand, no party disputes that SCSU *can* choose to *listen* only to the IFO and its members when formulating its own policies—as the Supreme Court recognized in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984).

But *Knight* does not permit governments to condition material employment advantages or other government benefits on the basis of First Amendment-protected speech or association. Instead, courts have held that kind of limitation on eligibility

for government employment or other benefits to be an unconstitutional condition. *See, e.g., Cuffley v. Mickes*, 208 F.3d 702, 709 (8th Cir. 2000); *Wishnatsky v. Rovner*, 433 F.3d 608, 612 n.2 (8th Cir. 2006). Undersigned counsel is aware of no case extending *Knight* in this way, and this Court's preliminary injunction ruling on Count I did not address the issue.

Notably, Defendants' motions raised a *legal* challenge to Count II but did not challenge the *plausibility* of the factual allegations supporting that claim under the *Twombly/Iqbal* standard. Nor did the Court rule on their plausibility. Because the Court "regard[ed] this as a Motion for summary judgment," Summary Judgment Order 1, it was required to assess the state of the record as it developed after the pleadings, viewing "the evidence and all reasonable inference in the light most favorable to the nonmoving party." *Weitz Co. v. Lloyd's of London*, 574 F.3d 885, 892 (8th Cir. 2009). Instead, the Court declined to consider Dr. Uradnik's 33-page declaration. *See* Summary Judgment Order 4. It is true that Dr. Uradnik's declaration was more specific than the allegations of her Complaint, but a plaintiff is not limited to the four corners of her complaint in defending a *stated cause of action* from a summary-judgment motion.[1]

Dr. Uradnik's declaration created material issues of fact precluding summary judgment. To know whether this case is more like *Knight* (involving the

[1] *Morgan Distrib. Co. v. Unidynamic Corp.*, 868 F.2d 992, 994 (8th Cir. 1989), is not to the contrary. *See* Summary Judgment Order 4. It is a statute-of-limitations case that addressed whether a cause of action not present in a complaint in any way was saved from the statute of limitations in briefing. It has no relevance here.

government's choice of whom to listen to) or more like the cases rejecting unconstitutional conditions (involving denial of employment or other benefits based on protected speech or association), the Court must resolve the factual questions of how these committees operate, whether they involve government benefits, and ultimately whether Defendants are conditioning eligibility for government employment and other benefits on First Amendment-protected activity. The Court committed a fundamental error in resolving these material questions without considering Dr. Uradnik's declaration establishing disputes of fact on them when it was obligated to give her, as the party opposing summary judgment, every benefit of the doubt.

II. Alternatively, the Court Should Vacate Its Judgment To Allow Dr. Uradnik Leave To Amend

Taken at face value, the import of the Court's order is simply that Dr. Uradnik "must file an amended complaint." Summary Judgment Order 4. The proper method for the Court to allow this is "to vacate" its judgment "under Rule 59(e)" and to grant leave to replead. *Foman v. Davis*, 371 U.S. 178, 181 (1962). Dr. Uradnik has lodged a proposed First Amendment Complaint with this motion that presents additional factual allegations supporting Count II.

As the Supreme Court explained in reversing a denial of leave to replead after summary judgment, "it is entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities." *Id.*; *see also Wilburn v. Pepsi-Cola Bottling Co. of St. Louis*, 492 F.2d 1288,

1290 (8th Cir. 1974) (reversal similar to that in *Foman*). Accordingly, the Court must grant leave "freely." Fed. R. Civ. P. 15.

No factor weighing against leave to amend exists here. There is no "prejudice to the opposing party," *Foman*, 371 U.S. at 182, because no discovery has been taken, and this case has barely progressed past the pleadings. Nor is there any plausible assertion of "undue delay, bad faith or dilatory motive." *Id.* at 182. Dr. Uradnik pleaded the cause of action at issue (Count II) in her original Complaint, and her counsel provided the detailed factual assertions contained in her proposed First Amendment Complaint to the Defendants this summer in a good-faith attempt (that the IFO proposed) to resolve Count II without discovery. *See* Pl's Opp. to Rule 12 and 56 Motions, ECF No. 88, at 14–15. Moreover, Dr. Uradnik asked for leave to replead if the Court found her pleading insufficient, and she even offered to amend prior to the Court's ruling on the Defendants' dispositive motions. *See id.* at 36–37 & n.9.

Nor would amendment be futile. As discussed, *Knight* does not authorize First Amendment discrimination, and the Complaint can be amended to state a claim of First Amendment discrimination (if it does not already do so sufficiently). At a minimum, if the Court interprets *Knight* as authorizing SCSU to deny employment benefits to Dr. Uradnik on the basis of her decision not to join the Union, it should provide its reasoning to facilitate review on appeal.

CONCLUSION

The Court should vacate its judgment and deny Defendants' dispositive motions. Alternatively, it should vacate its judgment and grant Dr. Uradnik leave to file her proposed First Amended Complaint.

December 10, 2019

Respectfully submitted,

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