

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNIVERSITY OF WISCONSIN-MADISON ROMAN
CATHOLIC FOUNDATION, INC., TIMOTHY J.
KRUSE, ELIZABETH A. PLANTON and
JOHN B. KOCZELA,

Plaintiffs,

MEMORANDUM AND ORDER

v.

06-C-649-S

DAVID G. WALSH, MARK J. BRADLEY,
JEFFREY BARTELL, ELIZABETH BURMASTER,
EILEEN CONNOLLY-KEESLER, JUDITH V. CRAIN,
MARY QUINNETTE CUENE, DANAE DAVIS, THOMAS
LOFTUS, MILTON MCPIKE, CHARLES PRUITT,
GERALD A. RANDALL, JR., PEGGY ROSENZWEIG,
JESUS SALAS, CHRISTOPHER SEMENAS, MICHAEL
J. SPECTOR, KEVIN P. REILLY, JOHN D. WILEY,
LORI M. BERQUAM, ELTON J. CRIM, JR. and
YVONNE FANGMEYER,

Defendants.

Plaintiffs University of Wisconsin-Madison Roman Catholic Foundation, Inc., Timothy J. Kruse, Elizabeth A. Planton, and John B. Koczela commenced this civil rights action against defendants David G. Walsh, Mark J. Bradley, Jeffrey Bartell, Elizabeth Burmaster, Eileen Connolly-Keesler, Judith V. Crain, Mary Quinnette Cuene, Danae Davis, Thomas Loftus, Milton McPike, Charles Pruitt, Gerald A. Randall, Jr., Peggy Rosenzweig, Jesus Salas, Christopher Semenas, Michael J. Spector, Kevin P. Reilly, John D. Wiley, Lori M. Berquam, Elton J. Crim, Jr., and Yvonne Fangmeyer alleging violations of their First Amendment Rights to Freedom of Association, Freedom of Speech, and Free Exercise of Religion.

Additionally, plaintiffs are alleging violations of their Fourteenth Amendment Rights to Equal Protection and Due Process. Plaintiffs seek monetary, declaratory, and injunctive relief in this action. Jurisdiction is based on 28 U.S.C. § 1331. The matter is presently before the Court on defendants' motion to clarify the preliminary injunction order. The following facts relevant to defendants' motion are undisputed.

BACKGROUND

Plaintiff University of Wisconsin-Madison Roman Catholic Foundation, Inc. (hereinafter the Foundation) is a non-profit Wisconsin corporation. The Foundation's major purposes are: (1) to promote the religious, charitable, and educational interests of: (a) Roman Catholic students, faculty, and staff at the University of Wisconsin-Madison, (b) other Roman Catholics who demonstrate a commitment to Catholic Ministry at the University of Wisconsin-Madison by supporting and becoming members of the Foundation; and (c) other individuals who demonstrate a commitment to Catholic ministry at the University of Wisconsin-Madison by supporting and becoming members of the foundation; and (2) to support and manage the temporal affairs of St. Paul University Catholic Parish of Madison, Wisconsin. In this context, temporal affairs means lay, material, and secular affairs. Accordingly, the Foundation is without question a Catholic organization.

UW-System Policy F20 provides that "[o]nly student organizations which meet the institutional qualifications for

official recognition and are so recognized...may receive [Segregated University Fees] SUF support." At UW-Madison, a group must abide by UW-Madison's nondiscrimination policies to be eligible to receive Registered Student Organization (RSO) status.

In an effort to retain its funding, the Foundation applied for RSO status for the 2006-2007 academic year. However, the Foundation's application for RSO status was denied. One of the reasons given for the denial was that the Foundation was not in compliance with the University's nondiscrimination requirement because (according to defendants) student membership in the Foundation is limited to Roman Catholics. However, the Foundation has asserted that membership is open to anyone who supports its mission.

When the Foundation's application for RSO status was denied, UW-Madison's nondiscrimination policy (found in the Student Organization Office Handbook) read in relevant part as follows:

University policy, as well as Federal and State laws, prohibits discrimination by Registered Student Organizations (RSOs) on the basis of race, color, creed, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status, or parental status. University-affiliated groups may not discriminate on these prohibited grounds in selecting or initiating new members, in selecting officers, or in providing any aid, benefit, or service....Each student organization is responsible for assuring that its membership procedures and service provision are nondiscriminatory....

However, on December 6, 2006 the UW-Board of Regents adopted Resolution I.2.f(2) which amended UW-Madison's nondiscrimination

policy as it concerns expressive organizations. Said resolution provides in relevant part as follows:

...Student organizations that select their members or officers on the basis of a commitment to a set of beliefs (e.g., religious or political beliefs) may limit membership, officer positions, or participation in the organization to students who, upon individual inquiry, affirm that they support the organization's goals and agree with its beliefs, so long as no student is excluded from membership, officer positions, or participation on the basis of his or her race, color, creed other than commitment to the beliefs of the organization, religion, national origin, disability, ancestry, age, sexual orientation, pregnancy, marital status or parental status, or, unless exempt under Title IX, sex....

On March 8, 2007 the Court conducted a hearing on plaintiffs' motion for a preliminary injunction. The Court determined that the Foundation is an expressive organization and the forced inclusion of non-Catholic members would significantly affect its ability to promote the religious, charitable, and educational interests of Roman Catholic students, faculty, and staff at the University of Wisconsin-Madison. Additionally, the Court determined that the Foundation's interest in expressive association substantially outweighs the University's interest in ending discrimination. Accordingly, the Court partially granted plaintiffs' motion for a preliminary injunction enjoining defendants from enforcing "University of Wisconsin-Madison's non-discrimination policy as it is written against the Foundation."

MEMORANDUM

Defendants assert the Court's statement in its March 9, 2007

Memorandum and Order on plaintiffs' motion for a preliminary injunction concerning the forced inclusion of non-Catholic members is inconsistent with the Foundation's expressed inclusiveness policy. Additionally, defendants assert the Court's Order does not allow them to enforce any aspect of the University's nondiscrimination policies against plaintiffs even if the Foundation were to exclude from membership or leadership persons whose protected statuses are unrelated to the Foundation's ability to promote its message. Accordingly, defendants argue their motion to clarify the preliminary injunction should be granted. Plaintiff asserts the Court's Order is narrowly tailored because it prohibits defendants from enforcing all nondiscrimination policies that would require forced inclusion of non-Catholics which includes Resolution I.2.f.(2). Accordingly, plaintiffs argue defendants' motion to clarify the preliminary injunction should be denied.

Federal Rule of Civil Procedure 65(d) enumerates the requirements for a valid injunction. Said rule provides in relevant part as follows:

Every order granting an injunction...shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained...

The specificity provisions of Rule 65(d) are not mere technical requirements. Rather, the Rule is designed to "prevent uncertainty and confusion on the part of those faced with

injunctive orders.’” 3M v. Pribyl, 259 F.3d 587, 597 (7th Cir. 2001) (quoting Schmidt v. Lessard, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974)). Accordingly, a court must strive to “strike a balance, framing orders that provide plaintiffs with the appropriate level of protection while still placing defendants on notice of the prohibited conduct.” Id. (citing Am. Can Co. v. Mansukhani, 742 F.2d 314, 333 (7th Cir. 1984)).

The Court acknowledges that its statement “[d]efendants are enjoined from enforcing University of Wisconsin-Madison’s non-discrimination policy as it is written against the Foundation” contained within its March 9, 2007 Memorandum and Order is not as specific as it should be in terms of setting forth the acts sought to be restrained. Accordingly, the Court will clarify said order.

In Christian Legal Soc’y v. Walker, 453 F.3d 853 (7th Cir. 2006), the Seventh Circuit determined that the likelihood of success on an expressive association claim (in the context of a preliminary injunction) turns on three questions: (1) Is the group an expressive association? (2) Would the forced inclusion of certain members and leaders significantly affect the group’s ability to spread its message? and (3) Does the group’s interest in expressive association outweigh the interest in ending discrimination? Id. at 862 (citation omitted).

In its March 9, 2007 Memorandum and Order the Court determined that the Foundation is an expressive organization. Additionally,

the Court determined that forced inclusion of non-Catholic members would significantly affect the Foundation's ability to promote the religious, charitable, and educational interests of Roman Catholic students, faculty, and staff at the University of Wisconsin-Madison. Finally, the Court determined that the Foundation's interest in expressive association substantially outweighs the University's interest in ending discrimination. It is with the Court's second determination that defendants' take issue.

Defendants argue the Court's "forced inclusion" determination was made in error because the Foundation has taken the position that membership in its organization is open to anyone "Catholic or not" who supports the Foundation's mission. However, whether the Foundation allows non-Catholics to become members of its organization is irrelevant to the Court's analysis. That is because under the Seventh Circuit's holding in Christian Legal Soc'y, the question is whether the *forced inclusion* of certain members and leaders would significantly affect the group's ability to spread its message. Id. (emphasis added). Accordingly, in addressing this question in the context of a preliminary injunction the Court looks at the actions of defendants not the Foundation.

There is no question that the Foundation is a Catholic organization. Additionally, the Foundation's major purposes are: (1) to promote the religious, charitable, and educational interests of: (a) Roman Catholic students, faculty, and staff at the

University of Wisconsin-Madison, (b) other Roman Catholics who demonstrate a commitment to Catholic ministry at the University of Wisconsin-Madison by supporting and becoming members of the Foundation; and (c) other individuals who demonstrate a commitment to Catholic ministry at the University of Wisconsin-Madison by supporting and becoming members of the foundation; and (2) to support and manage the temporal affairs of St. Paul University Catholic Parish of Madison, Wisconsin. While (c) demonstrates that the Foundation allows other individual non-Catholics to become members of its organization, it is likely that the Foundation's purpose of promoting the religious, charitable, and educational interests of Roman Catholic students, faculty, and staff at UW-Madison would be significantly affected were defendants to force the inclusion of non-Catholics into its organization. Accordingly, this determination was not made in error under the Seventh Circuit's holding in Christian Legal Soc'y.

However, the Court agrees with defendants' that certain aspects of UW-Board of Regents Resolution I.2.f(2) are unrelated to the Foundation's ability to promote its mission and message. As such, the language of the injunction must be clarified.

Accordingly,

ORDER

IT IS ORDERED that the Court's March 9, 2007 Memorandum and Order on plaintiffs' motion for a preliminary injunction is amended

in relevant part to read as follows:

IT IS ORDERED that plaintiffs' motion for a preliminary injunction is partially GRANTED as it concerns enforcement of University of Wisconsin-Madison's nondiscrimination policy. Defendants are preliminary enjoined from enforcing University of Wisconsin-Madison's nondiscrimination policy as it is written in the Student Organization Office Handbook against the Foundation. Additionally, defendants are preliminary enjoined from enforcing UW-Board of Regents Resolution I.2.f(2) as it is written against the Foundation in as much as said Resolution forces the inclusion of non-Catholic members.

Entered this 4th day of April, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ

District Judge