

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

| | | |
|-----------------------------|---|------------------|
| SEATTLE PACIFIC UNIVERSITY, |) | |
| |) | |
| Plaintiff, |) | No. CV22-5540RJB |
| |) | |
| v. |) | |
| |) | |
| ROBERT FERGUSON, in his |) | |
| official capacity as |) | |
| Attorney General of |) | |
| Washington, |) | |
| |) | |
| Defendant. |) | |

MOTION TO DISMISS

October 26, 2022

BEFORE THE HONORABLE ROBERT J. BRYAN
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: Lori Windham
 Nathaniel Taylor
 THE BECKET FUND FOR RELIGIOUS
 LIBERTY

For the Defendant: Daniel Jeon
 Patricio Marquez
 WASHINGTON ATTORNEY GENERAL'S
 OFFICE

Proceedings stenographically reported and transcript
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09:31:41AM

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10:14:52AM 1 my thinking on that, so to speak, and review the work that
10:14:58AM 2 we did. I can do that quickly. Let me ask that you
10:15:05AM 3 return at 11:30, and I will make an oral ruling on the
10:15:08AM 4 motion.

10:15:30AM 5 (Recessed.)

11:30:31AM 6 THE COURT: Well, this is an unusual case in the
11:30:35AM 7 way it comes to the Court, based on a request for
11:30:39AM 8 information that led to the filing of the federal
11:30:45AM 9 complaint at issue. The filing of the complaint led to
11:30:51AM 10 this motion to dismiss the first amended complaint, which
11:30:56AM 11 is Docket 18.

11:31:00AM 12 What I have before me as the record, that has to be
11:31:12AM 13 the basis for any decision on this motion, is the first
11:31:17AM 14 amended complaint, which is the operative complaint,
11:31:20AM 15 Docket 16; the defendant's motion to dismiss that
11:31:27AM 16 complaint, Docket 18; plaintiff's brief in opposition to
11:31:32AM 17 the motion to dismiss, which is Docket 21; and defendant's
11:31:44AM 18 reply in support of the motion to dismiss, which is Docket
11:31:47AM 19 24; along with the attachments to those documents, and the
11:31:54AM 20 law cited and referred to in the briefing mentioned, and,
11:32:00AM 21 of course, the argument of counsel. Those are the things
11:32:03AM 22 that are before the Court in determining this motion.

11:32:16AM 23 The necessary facts, obviously, must be gleaned from
11:32:20AM 24 those pleadings filed. I think it is important to stick
11:32:29AM 25 with the record and not speculate about other matters that

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11:32:33AM 1 are not part of the record.

11:32:37AM 2 I have examined the claims made here, and I am
11:32:42AM 3 satisfied that the motion to dismiss addresses all of the
11:32:48AM 4 claims filed in the complaint, and that there would be no
11:32:57AM 5 benefit to attempt to separate out some of the prayers or
11:33:02AM 6 some of the claims made in separate paragraphs in
11:33:09AM 7 analyzing the motion to dismiss.

11:33:17AM 8 In attacking the plaintiff's complaint, the
11:33:26AM 9 defendant, the attorney general -- I may refer to the
11:33:31AM 10 state here as the defendant, but it is technically the
11:33:35AM 11 attorney general. But the defense raises the issue of
11:33:40AM 12 standing in attacking the plaintiff's complaint. It's
11:33:50AM 13 important to note in any case that under the federal
11:33:55AM 14 Constitution federal judicial power is limited to cases in
11:34:04AM 15 controversy, and standing is an essential and unchanging
11:34:10AM 16 part of the case or controversy requirement of
11:34:18AM 17 Article III.

11:34:19AM 18 What we come to and refer to as the irreducible
11:34:23AM 19 constitutional minimum of standing requires a plaintiff to
11:34:28AM 20 have suffered an injury in fact caused by the defendant's
11:34:34AM 21 conduct that can be redressed by a favorable result.

11:34:42AM 22 I assume here, for the benefit of this proceeding,
11:34:49AM 23 that the plaintiff's operative complaint does allege an
11:34:53AM 24 injury in fact caused by defendant's conduct, and that
11:35:02AM 25 is -- the conduct is an effort to investigate plaintiff's

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1 hiring practices that plaintiff believes are not
2 appropriate for the attorney general's investigation, as
3 it has been made.

4 The next question on standing is whether a favorable
5 decision in this federal court would redress the alleged
6 injury to plaintiff. It does not.

7 The first five paragraphs in plaintiff's prayer
8 attached to the complaint requests declarations by the
9 Court. But we don't issue advisory opinions, and it is
10 not appropriate for the Court to do so. This Court
11 doesn't have the power to grant those requests. I should
12 note that sometimes such findings would be made as part of
13 the support for other conclusions.

14 But the next four paragraphs of the complaint, those
15 are Subparagraphs F through I in plaintiff's prayer, are
16 for the issuance of injunctions. And a careful
17 examination of those requests indicates that plaintiffs
18 are asking for a change to the state law against
19 discrimination, or for limits to it, and also, possibly,
20 limits on the state attorney general's investigatory
21 authority.

22 This Court doesn't have the power to change the state
23 law. I think it is interesting to note that plaintiff's
24 requests -- And I am going to paraphrase the language
25 here. But the prayer contains these requests that I have

11:37:39AM 1 paraphrased a little bit here. The request is to prohibit
11:37:44AM 2 the state from requiring information from Seattle Pacific,
11:37:48AM 3 or interfering with church governance, or the plaintiff's
11:37:53AM 4 relationships with ministerial employees.

11:38:00AM 5 The next paragraph asks that the Court prohibit the
11:38:02AM 6 state from enforcing the Washington Law Against
11:38:09AM 7 Discrimination against Seattle Pacific's employment
11:38:11AM 8 actions with regard to ministerial employees.

11:38:18AM 9 The third request is to prohibit the state, or the
11:38:23AM 10 attorney general, from enforcing the Washington Law
11:38:30AM 11 Against Discrimination against Seattle Pacific's religious
11:38:33AM 12 belief and conduct requirements for employees, quote,
11:38:39AM 13 regardless of ministerial status.

11:38:44AM 14 Those three paragraphs acknowledge that ministers, as
11:38:52AM 15 that phrase has become used in the law, ask indirectly
11:39:09AM 16 that there be a determination here of who is in the
11:39:18AM 17 ministerial capacity. In order to satisfy those
11:39:31AM 18 particular prayers the Court would have to determine
11:39:37AM 19 exactly who in the state's employment comes in the
11:39:47AM 20 category of being ministerial.

11:39:55AM 21 The last claim, there is a reference to retaliation,
11:40:01AM 22 that I think is subsumed in the other issues in the case.

11:40:08AM 23 All of those prayers in the complaint would require
11:40:12AM 24 investigation regarding who is a minister and inquiry into
11:40:18AM 25 the Washington Law Against Discrimination, which I cannot

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11:40:22AM 1 change. Also, it may inquire and query into the state law
11:40:31AM 2 of the authority of the attorney general to investigate,
11:40:36AM 3 which, again, is something I cannot change.

11:40:45AM 4 And what is interesting here -- perhaps not critical
11:40:50AM 5 but it is interesting, that the plaintiff is identifying
11:41:01AM 6 the differentiation between some employees and other
11:41:06AM 7 employees that come under the ministerial capacity. And
11:41:13AM 8 they request that determination, arguably, but then object
11:41:20AM 9 to the investigation in that fashion.

11:41:33AM 10 What the university requests here, it seems to me,
11:41:46AM 11 requires, as I indicated, investigation into who is a
11:41:53AM 12 minister and inquiry into the Washington Law Against
11:42:03AM 13 Discrimination, and indirectly, if not directly, would
11:42:09AM 14 require an examination into state law that this Court
11:42:14AM 15 cannot perform. I think there simply is no redressability
11:42:25AM 16 based on the pleadings that would justify the continuation
11:42:34AM 17 of this lawsuit.

11:42:36AM 18 Now, another important concern, perhaps more
11:42:44AM 19 important than redressability, is the Younger abstention
11:42:52AM 20 issues. Younger abstention comes into play when there is
11:43:01AM 21 a mix of state and federal claims in a case, and tells the
11:43:08AM 22 federal court whether to hear the case or to abstain on
11:43:13AM 23 comity grounds. The defendants here urge that Younger
11:43:19AM 24 abstention should apply.

11:43:23AM 25 Younger abstention applies to state civil proceedings

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11:43:28AM 1 when the proceeding is ongoing, constitutes a
11:43:34AM 2 quasi-criminal enforcement action, implicates an important
11:43:39AM 3 state interest, and allows litigants to raise a federal
11:43:45AM 4 challenge. And if those elements are met, the Court must
11:43:49AM 5 then consider whether the federal action would effectively
11:43:53AM 6 enjoin the state proceedings.

11:44:00AM 7 We know that state proceedings, civil proceedings,
11:44:05AM 8 are ongoing from the attorney general's letter, which is
11:44:10AM 9 Exhibit A attached to the complaint, and by the press
11:44:15AM 10 released attached -- that was issued by the attorney
11:44:19AM 11 general and attached as Exhibit D to the complaint.

11:44:28AM 12 Those documents indicate a basis for the state
11:44:32AM 13 action, whether you agree with that basis or not. But
11:44:39AM 14 that basis is complaints received, and also the proposal
11:44:45AM 15 to continue the investigation, as found in the press
11:44:49AM 16 release.

11:44:54AM 17 And I would quote from that document, "SPU's attempt
11:45:00AM 18 to obstruct our lawful investigation will not succeed."
11:45:06AM 19 That is simply an indication that the state has a plan to
11:45:10AM 20 continue the investigation it has started.

11:45:16AM 21 The ongoing investigation is enough under the law to
11:45:21AM 22 show an ongoing civil proceeding. And I would cite
11:45:30AM 23 Citizens for Free Speech and other cases that indicate
11:45:33AM 24 that an ongoing investigation is enough to trigger Younger
11:45:42AM 25 concerns.

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11:45:44AM 1 The proceedings by the state also constitute a
11:45:50AM 2 quasi-criminal enforcement action. The investigation
11:45:55AM 3 could lead to enforcement by the state -- by the attorney
11:46:02AM 4 general and the state under the Washington Law Against
11:46:17AM 5 Discrimination. That possibility turns that investigation
11:46:20AM 6 into a quasi-criminal enforcement action for Younger
11:46:27AM 7 concerns.

11:46:31AM 8 The state law against discrimination, RCW 49.60,
11:46:39AM 9 implicates an important state interest, the elimination of
11:46:44AM 10 discrimination based on sexual orientation. Clearly,
11:46:52AM 11 federal law challenges can be raised in any state
11:46:55AM 12 proceeding the same way that they can be raised in this
11:47:00AM 13 federal proceeding. So those elements are met here.

11:47:08AM 14 So we must, lastly, determine under the Younger
11:47:13AM 15 abstention whether this federal action would effectively
11:47:17AM 16 enjoin the state proceedings.

11:47:22AM 17 The injunctions requested here in the plaintiff's
11:47:28AM 18 operative complaint would halt or enjoin the state
11:47:33AM 19 proceeding in attempting to investigate Washington Law
11:47:36AM 20 Against Discrimination violations against the plaintiff.

11:47:42AM 21 The requirements for Younger abstention are therefore
11:47:46AM 22 met here, and the defendant's motion to dismiss the
11:47:52AM 23 complaint should be granted. It's my judgment that this
11:47:59AM 24 decision is consistent with the comity considerations that
11:48:05AM 25 underlie Younger abstention.

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11:48:10AM 1 This case started out as a state case, and it is my
11:48:15AM 2 judgment that it belongs in that forum under the pleadings
11:48:22AM 3 now filed and under the circumstances as they now exist.

11:48:31AM 4 So based on this oral opinion the motion to dismiss
11:48:34AM 5 is granted. I had my clerk prepare an order that I will
11:48:47AM 6 sign and post now. Is this the 26th of October? I
11:49:03AM 7 believe it is. So that will trigger whatever post-hearing
11:49:08AM 8 matters you want to raise.

11:49:13AM 9 Thank you much. I appreciate your thoughtful
11:49:17AM 10 arguments and concern. It would be interesting to analyze
11:49:27AM 11 all the issues that are possibly being raised in this
11:49:35AM 12 proceeding. But I think it is not appropriate for the
11:49:42AM 13 federal court to do that under the circumstances presented
11:49:46AM 14 here for the reasons given. Thank you.

15 (Proceedings adjourned.)
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