UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Civil Action No. 3:17-cv-0011

LONNIE BILLARD,

Plaintiff,

v.

CHARLOTTE CATHOLIC HIGH SCHOOL, MECKLENBURG AREA CATHOLIC SCHOOLS, and ROMAN CATHOLIC DIOCESE OF CHARLOTTE,

Defendants.

DEFENDANTS' REPLY TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to this Court's order dated June 16, 2018, Defendants submit this reply to Plaintiff's supplemental memorandum of law filed with the Court on July 17, 2018.

I. The First Amendment Applies to Defendants.

In his supplemental briefing, Billard persists in making the remarkable argument that First Amendment's guarantees of free exercise of religion and freedom of association offer no protection to religious employers beyond the ministerial exception to Title VII recognized by the Supreme Court in *Hosanna Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012). However, Billard still has not – and cannot – cite to a single case that holds that Title VII, a statute, somehow curtails the reach of constitutionally guaranteed freedoms.

As Defendants have previously explained, the ministerial exception is simply one application of the broader Church Autonomy Doctrine. (Doc. No. 33 at 11-12); *see also*

Skrzypczak v. Roman Catholic Diocese Of Tulsa, 611 F.3d 1238, 1242 n. 4 (10th Cir. 2010) (citation omitted) ("Out of this broad prohibition [of the Church Autonomy Doctrine], the courts have carved a narrower ministerial exception…that prevents adjudication of Title VII employment discrimination cases brought by ministers against churches."); *Hubbard v. J Message Grp. Corp.*, No. CV 17-763 KK/JHR, 2018 WL 3377706, at *6 (D.N.M. July 11, 2018) ("The ministerial exception is a narrow subcategory of the church autonomy doctrine...") Accordingly, that Billard was not a "minister" for purposes of the ministerial exception is immaterial and does not negate Defendants' rights to free exercise of religion or expressive association.

II. *Masterpiece Cakeshop* Confirms Defendants' First Amendment Right to Teach Their Views on Marriage.

Contrary to Billard's claims in his supplemental memorandum, *Masterpiece Cakeshop* reaffirms Defendants' right under the First Amendment "to teach the principles that are so fulfilling and so central to their lives and faiths" regarding the institution of marriage. *Masterpiece Cakeshop v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1727 (2018) (quoting *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015)). Billard asks the Court to ignore this aspect of *Masterpiece Cakeshop*. Instead, Billard argues that a generic restatement of black letter law – that neutral laws of general applicability generally do not violate the Free Exercise Clause – somehow entitles Billard to summary judgement. However, Billard's argument is fundamentally flawed for two reasons.

First, *Masterpiece Cakeshop* does not directly address the discrete and narrow Constitutional and statutory questions relating to the interplay of the First Amendment, Title VII, and RFRA that this case presents. Accordingly, to argue that a boilerplate recitation of a general rule governs this case is problematic to say the least. Second, Billard's argument ignores

Masterpiece Cakeshop's repeated statements that religious individuals continue to have protection for their views on the sanctity of marriage. Religious institutions and persons today may "advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned," *Obergefell v. Hodges*, 135 S. Ct. at 2607, and these sincerely held beliefs are still entitled to full protection and consideration under the First Amendment. *Masterpiece Cakeshop*, 138 S. Ct. at 1732.

III. RFRA Bars Billard's Claims.

Billard attempts to contort *Masterpiece Cakeshop* into a decision on RFRA – a statute the Supreme Court did not address. If anything, *Masterpiece Cakeshop* holds that sincerely held religious beliefs are protected and entitled to consideration under the First Amendment. *Masterpiece Cakeshop*, 138 S. Ct. at 1732. Neither the Court's opinion, the concurring opinions, nor Justice Ginsburg's dissent makes any mention of RFRA's statutory protections. Similarly, the Supreme Court in *Masterpiece Cakeshop* never addressed whether the government had a compelling interest in requiring the baker to prepare a cake for the same-sex couple. In light of these facts, Billard's assertion that *Masterpiece Cakeshop* somehow confirms that the application of Title VII in this case does not violate RFRA is puzzling at best.

Moreover, even if *Masterpiece Cakeshop* had addressed RFRA – which it did not – Billard's argument ignores the basic framework of that statute. Under RFRA, a person whose religious exercise is substantially burdened by a law is entitled to an exemption unless the Government "demonstrates that *application of the burden to the person (the particular claimant whose sincere exercise of religion is being substantially burdened)* – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that

compelling governmental interest." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2761 (2014) (citing 42 U.S.C. § 2000bb–1(b))(emphasis added).

Billard has never attempted to show how the application of Title VII to Defendants – the particular claimants in this case whose sincere exercise of religion has been burdened – is in furtherance of a compelling interest. Instead, Billard attempts to rely on the general interest in protecting employees from discrimination. But, as the Court in *Hobby Lobby* explained, these general interests are not sufficient. Specifically, RFRA "requires [courts] to look beyond broadly formulated interests and to scrutinize the asserted harm of granting specific exemptions to particular religious claimants – in other words, to look to the marginal interest in enforcing [the statute] in these cases." *Id.* at 2779 (citation omitted).

Billard cites to the Sixth Circuit recent decision in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (2018) and to *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968) in support of his argument. However, neither case alters this Court's analysis under RFRA. As explained in greater detail in Defendants' Supplemental Memorandum In Support of Summary Judgment, in *Harris*, the Sixth Circuit misapplied the plain language of RFRA and Supreme Court precedent in *Hobby Lobby* and *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) by failing to follow the "to the person" standard. (Doc. No. 46). The Sixth Circuit's non-binding decision in *Harris* is mistaken, and this Court should instead apply RFRA's statutory requirements as articulated by the Supreme Court in *Hobby Lobby*. *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968) is also inapplicable; that case concerned the award of counsel fees in a case concerning racial discrimination at drive-in restaurants and makes no mention of RFRA. Thus, Billard's cases do not dictate the outcome of the RFRA question in this case.

Billard also reasserts his argument that RFRA only applies in lawsuits where the government is a party. As explained in Defendants' Memorandum In Opposition to Plaintiff's Motion for Partial Summary Judgment, Billard's argument is inconsistent with RFRA's plain language and Congress' explicit intent in enacting RFRA, and the Court should reject it. (Doc. No. 33 at 14-18).

CONCLUSION

Billard repeatedly attempts to frame the issue before the Court in terms of a "right to discriminate." This formulation is misleading at best. What is at stake is the very right that the Supreme Court in *Obergefell* promised was undisturbed by its decision: that "religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." The notion that a Catholic school may be coerced – under penalty of law – to employ persons who advocate positions directly contrary to the Catholic faith is antithetical to the liberties guaranteed by the First Amendment. For the reasons set forth herein and in Defendants' previous submissions, Defendants request that the Court enter summary judgment in their favor on all of the Plaintiff's claims.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certify that the foregoing memorandum does not exceed 1,500 words.

This the 30th day of July 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send electronic notice to counsel for Plaintiff at the addresses as follows:

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This the 30th day of July 2018.

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