

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT MULGREW	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	NO. 03-CV-5039
	:	
VINCENT J. FUMO, individually	:	
as a Pennsylvania State Senator	:	
	:	
Defendant	:	

**MEMORANDUM AND ORDER**

JOYNER, J.

June 30, 2005

Defendant has filed a Motion for Summary Judgment on Plaintiff's First Amendment Claim on the ground of qualified immunity and for stay of discovery pending disposition of this Motion. For the reasons which follow, this Court shall treat Defendant's Motion as one seeking reconsideration of this Court's June 20, 2005 Order denying Defendant's Motion to Dismiss Plaintiff's First Amendment Claim and for Stay of Discovery Pending Disposition of Qualified Immunity Defense. Upon reconsideration, Defendant's Motion is denied.

**Factual Background**

Plaintiff was hired to work in Defendant's constituent services office in December 1992. (Compl., ¶ 5). Plaintiff's job responsibilities involved "taking telephone calls and meeting with Defendant's constituents who had questions about state government issues, such as driver licensing." (Id. at ¶ 8). Plaintiff alleges that his responsibilities did not include work

relating to Defendant's "legislative agenda," such as advocating for or against pending legislation or assisting Defendant in such activities. (Id. at ¶ 9). Plaintiff further asserts that he never made "public appearances where he held himself out to be a representative of Defendant." (Id. at ¶ 10). Moreover, Plaintiff alleges that during the course of his employment, he infrequently interacted with Defendant, and neither spoke nor met with Defendant on a regular basis. (Id. at ¶ 11). Finally, Plaintiff alleges that Defendant did not exercise day-to-day supervision over Plaintiff's work. (Id. at ¶ 12).

Conversely, Defendant in this action contends that Plaintiff's job responsibilities required him to "[r]epresent the Senator at various community meetings." Exhibit A to Defendant's Instant Motion ¶ 3; Exhibit C. Defendant further contends that Plaintiff "had access to confidential information regarding [Defendant's] legislative initiatives, stances and strategies, as well as access to [his] political initiatives, stances and strategies." Exhibit A ¶ 4.

On May 13, 2002, in anticipation of the upcoming Pennsylvania gubernatorial primary, Plaintiff and Defendant attended a cocktail party organized by the Philadelphia Democratic Committee. (Compl., ¶¶ 15, 17). When Plaintiff entered the cocktail party, then-gubernatorial candidate Edward Rendell handed Plaintiff a campaign sticker reading "RENDELL GOVERNOR." (Id. at ¶ 18). Subsequent to Plaintiff placing the

sticker on his jacket lapel, Defendant approached Plaintiff and told him to remove the sticker. (Id. at ¶¶ 19, 20). When Plaintiff did not comply, Defendant told Plaintiff that his employment was terminated. (Id. at ¶¶ 21, 22).

Plaintiff alleges that his employment was terminated solely because he did not remove the campaign sticker. (Id. at ¶ 23). Plaintiff further alleges that Defendant told several party attendees that Plaintiff was terminated because he would not remove the sticker. (Id. at ¶ 25). Defendant, however, contends that Plaintiff was not only wearing a Rendell for Governor button at the party, but also was standing with people "allied against [Defendant's] position with regard to the gubernatorial primary." Exhibit A ¶ 9. Defendant further contends that Plaintiff was laughing at Defendant, thereby causing him embarrassment. Id. at ¶¶ 9, 10. Accordingly, Defendant argues that he terminated Plaintiff's employment because Plaintiff's conduct was "embarrassing and humiliating," "undermined [him] in the eyes of [his] peers," and thus "impaired [his] ability to effectively carry out [his] official duties." Id. at ¶ 12.

#### **Standards Governing A Motion for Reconsideration**

The purpose of a motion for reconsideration is to correct manifest errors of law or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); Frederick v. S.E. Pa. Transp. Auth., 926 F. Supp. 63, 64 (E.D. Pa. 1996). A party filing a motion for reconsideration must rely

on at least one of the following grounds: (1) the availability of new evidence that was not available when the court determined the initial motion; (2) an intervening change in the controlling law; or (3) the need to correct an error of law or to prevent manifest injustice. Hartford Fire Ins. Co. v. Huls Am., Inc., 921 F. Supp. 278, 279 (E.D. Pa. 1995); Prousi v. Cruisers Div. of KCS Intl., Inc., 1997 WL 793000 at \*3 (E.D. Pa. 1991). Absent one of these three grounds, it is improper for a party moving for reconsideration to "ask the Court to rethink what [it] had already thought through - rightly or wrongly." Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). Moreover, where evidence is not newly discovered, a party may not submit that evidence in support of a motion for reconsideration. Harso, 779 F.2d at 909 (citing DeLong Corp. v. Raymond Intl., Inc., 622 F.2d 1135, 1139-40 (3d Cir. 1980)).

#### **Discussion**

"Where a motion [seeks] to amend a judgment on the merits, it is to be considered a motion for reconsideration and tested by those standards." Loc.R.Civ.P. 7.1; See, Haymond v. Lundy, 205 F. Supp. 2d 390, 296 (E.D. Pa. 2002). Although Defendant labels his most recent submission to this Court as a "Motion for Summary Judgment," the Motion merely reasserts arguments previously raised and asks this Court to reconsider its prior ruling. Accordingly, this Court shall treat Defendant's latest submission as a Motion for Reconsideration.

In applying the law governing motions for reconsideration to the case now before us, we find that Defendant has failed to present new or newly discovered evidence to this Court. Likewise, Defendant has not shown an intervening change in the controlling law nor persuaded this Court that it committed an error of law in issuing our Order of June 20, 2005. Rather, in moving for reconsideration, Defendant merely reargues the same points that he argued in his Motion to Dismiss. Under the standards outlined above, Defendant's Motion falls short of the necessary showing to entitle him to relief and must therefore be denied.

Even if this Court were to treat Defendant's most recent submission as a Motion for Summary Judgment, as we noted in our June 20<sup>th</sup> memorandum, genuine issues of material fact exist which would prevent the entry of summary judgment. Specifically, the parties disagree as to the scope of Plaintiff's job-related responsibilities, particularly regarding whether Plaintiff served as Defendant's representative to the public. The parties in this action further dispute the reasons for Plaintiff's termination. Thus, significant factual disputes would render summary judgment inappropriate.

An order follows.

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VINCENT J. FUMO, individually	:	
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	:	
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ORDER

AND NOW, this 30th day of June, 2005, upon consideration of Defendant Vincent J. Fumo's Motion for Summary Judgment (Doc. No. 25), which is in the nature of a Motion for Reconsideration of this Court's Order dated June 20, 2005 (Doc. No. 24), and Plaintiff's response thereto (Doc. No. 26), it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.