

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MOLLY KELLY,	:	
	:	Case No. 4:26-cv-0284
Plaintiff,	:	
	:	(Honorable Matthew W. Brann)
v.	:	
	:	Electronically Filed
PENNSYLVANIA STATE UNIVERSITY;	:	
NEELI BENDAPUDI <i>in her official</i>	:	
<i>capacity as President of Pennsylvania State</i>	:	
<i>University; and JEFFREY HYDE, in his</i>	:	
<i>official capacity as Associate Dean and</i>	:	
<i>Director of Penn State Extension.</i>	:	
	:	
Defendants.	:	

**Defendants’ Reply Brief in Further Support of
Motion to Dismiss Plaintiff’s First Amended Complaint**

Defendants The Pennsylvania State University, Dr. Neeli Bendapudi, and Dr. Jeffrey Hyde (collectively, “Defendants”) submit this reply brief in accordance with Local Rule 7.7 to address Plaintiff’s Opposition to Defendants’ Motion to Dismiss the Amended Complaint (Doc. 27, hereinafter “*Pl.’s Opp.*”). Like her Amended Complaint, Plaintiff’s Opposition largely relies on conclusory statements and rhetoric unsupported by any plausible facts and directly contradicted by Plaintiff’s own exhibits. Plaintiff’s Opposition also ignores and misrepresents several of Defendants’ arguments and dispositive case law. Finally, Plaintiff asks the Court to make untenable leaps in logic that defy common sense. The Court should dismiss this entire civil action with prejudice.

I. Argument.

A. Plaintiff fails to state a claim of viewpoint discrimination.

Viewpoint discrimination occurs “[w]hen the government targets not subject matter, but particular views taken by speakers on a subject.” *Startzell v. City of Philadelphia, Pennsylvania*, 533 F.3d 183, 193 (3d Cir. 2008) (citation omitted). Plaintiff’s Opposition vaguely alleges that Defendants “prescribed its own orthodoxy” and that she “was denied promotion because she did not sufficiently express the viewpoints required by the Defendants.” (*Pl.’s Opp.*, pp. 2, 10-11.) However, despite having the opportunity to do so in her initial Complaint, Amended Complaint, and her Opposition, Plaintiff has yet to identify **what** viewpoint Defendants purportedly prescribed or discriminated against relating to DEI. The reason is simple: Defendants did not target or restrict any particular viewpoint.

Rather than address this deficiency head on, Plaintiff continues to rely on her strained and unreasonable interpretation of a few cherry-picked words from the Promotion Dossier Review Committee’s (the “Committee”) letters. During the relevant period, “[e]ach educator [was] required to **obtain** 8 hours of diversity-related training each year.” (Ex. E, p. D10 (emphasis added).) On her 2024-2025 promotion dossier, Plaintiff reported that, from “2018-present,” she conducted “[m]ultiple site visits to women, minority-owned, and LGBTQ-owned wineries” and “provided technical expertise to nuns at a Greek Orthodox monastery.” (*Id.* at p.

D10.) Plaintiff self-attributed 10 “Diversity Hours” to this activity toward the minimum 8 hours of annual “diversity-related training” she was supposed to receive. (*See id.*) As explained in Defendant’s opening brief, Plaintiff’s rendering of technical expertise *to* certain businesses—regardless of the identity of those businesses—simply does not constitute **obtaining** diversity training. Accordingly, the Committee appropriately questioned how Plaintiff “doing site visits and providing technical expertise to LGBTQ and Greek Orthodox-owned businesses is **receiving** diversity training,” because it literally, simply is not. (Ex. B, p. 3 (emphasis added); *see also First Amended Complaint*, Doc. 18, hereinafter “*FAC*,” ¶ 48.) The Committee also appropriately observed that “[a]n **effort to learn** was not interpreted by the committee by reading this section,” which by Plaintiff’s own description involved Plaintiff teaching others rather than Plaintiff receiving training.¹ (Ex. B, p. 3 (emphasis added).) Nothing about these comments comes close to stating that Plaintiff must agree with what she learns, nor was there any such requirement.

Remarkably, Plaintiff doubles down on her contention that these straightforward comments constitute “demands” that Plaintiff show an “effort to learn” about DEI and growth, which she alleges somehow equates to Defendants

¹ Training, of course, involves an “*effort to learn*” something for oneself, hence the Committee’s reference.

demanding that Plaintiff provide “written reflections” showing “ideological fealty” to “the University’s prescribed DEI orthodoxy” and that Plaintiff express “a viewpoint about DEI training that aligned with Defendants’ views” – although she never identifies what those purported views are. (*Pl.’s Opp.*, pp. 1, 5, 17.) These suggestions and contentions are, put simply, made up. They are not supported by the Amended Complaint or the exhibits attached thereto. And to be clear, Plaintiff’s *entire* First Amendment case rests upon these fantastical allegations. (*See, e.g., FAC*, ¶¶ 22, 36, 38, 52, 54; *Pl.’s Opp.*, pp. 1, 7, 11-12, 14, 16-18; *see also id.* at p. 11 (arguing that “[r]equiring Dr. Kelly to discuss her ‘growth’ and express an ‘effort to learn’ from diversity training discriminates based on viewpoint”).) Plaintiff’s allegations are not only nonsensical and incorrect, they are legally insufficient and unsupported by any plausible facts.

Ultimately, neither Plaintiff’s Amended Complaint nor her Opposition demonstrate any facts to support her claim that Defendants targeted any particular views or that her specific opinions were the rationale for any restriction. The Court should dismiss Plaintiff’s viewpoint discrimination claim, with prejudice.

B. Plaintiff fails to state a claim of compelled speech.

Plaintiff’s Opposition similarly fails to support her compelled speech claim. A “violation of the First Amendment right against compelled speech occurs only in the context of actual compulsion. In order to compel the exercise . . . of speech, the

governmental measure must punish, or threaten to punish, protected speech by governmental action that is regulatory, proscriptive, or compulsory in nature.” *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 189 (3d Cir. 2005) (internal quotations and citation omitted).

Plaintiff concedes that “[s]imply being required to receive training when ‘[t]here was no allegation that [plaintiffs] were forced to affirmatively agree with any of the statements in the trainings’ and ‘[t]here was no allegation that they were threatened with any kind of penalty . . . if they expressed their countervailing viewpoints . . . in the workplace’ ***is not compelled speech.***” (*Pl.’s Opp.*, p. 13 (quoting *Norgren v. Minn. Dep’t of Hum. Servs.*, 96 F.4th 1048, 1057–58 (8th Cir. 2024)) (emphasis added).) As discussed above and in Defendants’ opening brief, Plaintiff was not required to affirmatively agree with any particular view on DEI nor threatened with any penalty for expressing any countervailing viewpoints. Plaintiff argues that the requisite “compulsion” for her compelled speech claim existed because “[i]f Dr. Kelly refuses to articulate the chosen viewpoint, she remains ineligible for promotion.” (*Pl.’s Opp.*, p. 13.) However, Plaintiff’s allegation that she was ineligible for promotion unless she articulated “the chosen viewpoint” (whatever that means) is unsupported by any well-pled facts. Plaintiff does not even identify what the purported “chosen viewpoint” was, because she cannot.

Once again, Plaintiff instead relies on cherry-picked phrases from the Committee's letters that are taken out of context and given unreasonable meanings by Plaintiff. (*See, e.g., Pl.'s Opp.*, p. 14 (contending that Plaintiff "pled the compelled speech with specificity" based on her allegations that Defendants suggested that she "'be more descriptive,' 'show efforts to apply learnings,' demonstrate an 'effort to learn,' and 'show growth'").) Plaintiff's selected phrases from the Committee's letters simply do not constitute "actual compulsion" to speak subject to threat of punishment, as required to state a compelled speech claim. *C.N.*, 430 F.3d at 189 (citation omitted).

Moreover, Plaintiff's assertion that her compelled speech claim is subject to strict scrutiny is incorrect. (*See Pl.'s Opp.*, pp. 14-15.) Plaintiff first fails to allege that Defendants compelled *any* protected speech by Plaintiff, so no constitutional scrutiny test even applies. To the extent that the Court believes Defendants somehow compelled protected speech by Plaintiff, then an intermediate level of scrutiny would apply. (*See Defs.' Br.*, pp. 23-25.) Compelled speech is subject to "different levels of scrutiny depending on whether the government is also compelling a certain viewpoint as part of the compelled speech." *C.N.*, 430 F.3d at 188. Compelled speech that does not compel a certain viewpoint is "subject to an intermediate level

of scrutiny.” *Id.* Plaintiff has not alleged *any particular viewpoint* that Defendants compelled her to express, so strict scrutiny cannot apply.²

Next, Plaintiff alleges that Defendants cannot show a compelling interest because “compliance with federal laws cannot automatically be a compelling interest.” (*Pl. ’s Opp.*, p. 15 (citing *Biondo v. City of Chi.*, 382 F.3d 680, 684 (7th Cir. 2004))). Plaintiff’s argument misses the mark.³ Defendants did not argue that they simply had an interest in complying with federal laws in place at the time.

² Plaintiff attempts to compare this case to *Miller v. Mitchell*, 598 F.3d 139, 152 (3d Cir. 2010), but *Miller* is plainly distinguishable in critical ways. (*Pl. ’s Opp.*, p. 13.) In *Miller*, a District Attorney threatened to prosecute teenage girls suspected of “sexting” with felony charges unless they attended an education program that required that they “write a homework paper explaining ‘how [their] actions were wrong.’” *Id.* at 142, 144, 152. The Court held that the plaintiffs showed that they were likely to succeed on a First Amendment compelled speech claim because forcing the students to write a report explaining why their actions were immoral constituted compelled speech. *Id.* at 152. In other words, the plaintiffs were forced to endorse a particular moral view with which they disagreed. Here, Plaintiff was never required to agree or disagree with any particular viewpoint. Moreover, while the plaintiffs in *Miller* were threatened with a penalty of felony prosecution if they refused to complete the request, Plaintiff faced no punishment or threat of punishment in this case.

³ *Biondo*, which is not binding on this Court, simply concluded that the City’s argument “that regulations supply a compelling governmental interest in making decisions based on race” did not make sense because “[t]hen Congress or any federal agency could direct employers to adopt racial quotas, and the direction would be self-justifying: the need to comply with the law (or regulation) would be the compelling interest. Such a circular process would drain the equal protection clause of meaning.” *Biondo*, 382 F.3d at 684. Here, Defendants’ arguments are distinguishable because the University has a substantial interest in maintaining federal grant funding. (*Defs. ’ Br.*, pp. 24-25.)

Rather, Defendants have a “legitimate, important, and substantial interest in maintaining federal grant funding,” which the University would have risked losing if it failed to comply with the then-applicable federal civil rights compliance requirements and implement diversity training. (*Def’s. ’ Br.*, pp. 24-25.) Furthermore, Plaintiff’s Opposition fails to address the University’s additional legitimate and substantial interest in ensuring faculty professional development, promoting an inclusive environment, and employee diversity training. (*See id.*)⁴

Finally, Plaintiff pays lip service to the cases cited by Defendants by simply declaring that “[t]he cases cited by Defendants are distinguishable and do not govern this case,” (*Pl.’s. Opp.*, p. 16), but she fails to actually distinguish those cases.

For the foregoing reasons, and those explained in Defendants’ opening brief, the Court should dismiss Plaintiff’s compelled speech claim with prejudice.

C. Plaintiff fails to state a claim of unconstitutional condition.

Plaintiff’s Opposition repeats the same arguments in support of her “unconstitutional conditions” claim. Specifically, Plaintiff again alleges—with no factual support—that “Dr. Kelly’s promotion was conditioned on her expressing a view that aligned with Defendants’ viewpoint” and Defendants therefore “added a unconstitutional condition.” (*Pl.’s Opp.*, pp. 17-18.) For the same reasons articulated

⁴ Plaintiff concedes that the University has a legitimate and substantial “interest in ensuring faculty participate in professional development,” (*FAC*, ¶ 67), and “pursu[ing] diversity goals.” (*Id.* at ¶ 51.)

above and in Defendants’ opening brief, there are no facts supporting Plaintiff’s conclusory allegation that Defendants required Plaintiff to express a particular view. Plaintiff’s unconstitutional condition claim should be dismissed with prejudice.

D. Each of Plaintiff’s First Amendment claims also fails because Plaintiff cannot identify any protected speech.

Each of Plaintiff’s claims also fails because Plaintiff fails to sufficiently allege any protected speech at issue. As a preliminary matter, Plaintiff does not dispute that *each* of her claims fails if she cannot show protected speech. For public employees like Plaintiff, their speech is protected by the First Amendment only if: (1) the plaintiff “spoke ‘as a citizen, not as an employee;’” (2) the speech “involved a matter of public concern;” and (3) the government lacked “‘an adequate justification’ for ‘treating the employee differently than the general public based on its needs as an employer.’” *Sundberg v. DiRocco*, No. 4:17-CV-00063, 2017 WL 3394314, at *4 (M.D. Pa. Aug. 8, 2017) (citations omitted); *see also Bradley v. W. Chester Univ. of Pennsylvania State Sys. of Higher Educ.*, 880 F.3d 643, 650–51 (3d Cir. 2018).

Plaintiff’s Opposition fails to provide any meaningful response to Defendants’ argument that Plaintiff’s alleged speech is not protected because it was made in her role as a public employee and pursuant to her official duties. (*See Defs.’ Br.*, pp. 27-29.) Instead, she argues in conclusory fashion that “Dr. Kelly’s refusal to articulate Defendants’ required viewpoint is not in the context of her official duties” because “[h]er duties as an educator do not include drinking Defendants’ ideological Kool-

Aid” (*Pl. ’s Opp.*, pp. 18-19.) Alternatively, and confusingly, Plaintiff contends that, “[b]y arguing that Dr. Kelly’s decision not to speak was in the course of her official duties, they prove the compulsion.” (*Id.* at p. 19.) What Plaintiff is saying, to be clear, is that if she disagrees with job-related speech, she can simply reject that it is, in fact, job-related speech. Plaintiff cites to no authority for this proposition.

Even if we were talking about putatively protected speech, Defendants have an adequate justification for their alleged actions. The University’s receipt of federal funding including USDA grants was contingent on civil rights compliance requirements, and civil rights training is a critical aspect of the same. The University also has an interest in ensuring faculty participate in professional development and diversity training aiming at promoting an inclusive environment. Plaintiff’s Opposition provides no response to this argument other than again alleging that Defendants demanded that she “support a particular ideology” and that she was denied promotion based on her “nonacceptance of their viewpoint.” (*Pl. ’s Opp.*, p. 19-20.) Again, there is zero factual support for Plaintiff’s allegations, nor does Plaintiff identify what viewpoint Defendants purportedly insisted that she support.

E. Any putative First Amendment retaliation claim fails.

Plaintiff’s Amended Complaint does not expressly allege a First Amendment retaliation claim. Nonetheless, Defendants explained that any implied or attempted claim fails and must be dismissed because (1) Plaintiff fails to allege any protected

speech and (2) Plaintiff cannot allege that any protected activity was a substantial factor in the alleged retaliatory action. (*See Def.'s Br.*, pp. 30-31 (citing *Ali v. Woodbridge Twp. Sch. Dist.*, 957 F.3d 174, 184 (3d Cir. 2020) (citation omitted).)

In her Opposition, Plaintiff opportunistically argues that she states a retaliation claim because “the gravamen of Dr. Kelly’s Complaint is speech retaliation,” (*Pl.’s Br.*, p. 21), but she fails to identify where in her Amended Complaint she actually pleads that claim, let alone in which Count.⁵ Defendants maintain that she has not properly pled a First Amendment retaliation claim.

Moreover, to the extent the Court believes Plaintiff has raised a First Amendment retaliation claim, it should be dismissed. First, there is no protected speech at issue. Second, Plaintiff alleges that “Dr. Kelly’s viewpoint was a substantial or motivating factor in Defendants’ denial of her promotion,” but her argument is belied by her own exhibits. Specifically, Plaintiff contends that the Committee’s statements regarding “an effort to learn” and “checking[ing] the box” somehow “reveal that Defendants were . . . demanding a confession of genuine ideological conversion,” but her bluster is not based on any realistic reading of the

⁵ To the extent the Court (1) believes that Plaintiff has adequately alleged a claim for First Amendment retaliation and (2) permits any such claim to proceed beyond the 12(b)(6) stage, Plaintiff should be required to identify under which Count she asserts such a claim. Otherwise, Defendants would be unfairly left wondering what claims she is alleging in which Counts.

Committee’s letters. As previously explained, nowhere did the Committee demand that Plaintiff agree or disagree with any particular views.

Third, Plaintiff alleges that “Defendants have not sufficiently shown that the same actions would have been taken anyway,” notwithstanding her alleged speech. (*Pl.’s Opp.*, p. 22.) Plaintiff ignores the numerous reasons (entirely unrelated to DEI) expressed in the Committee’s letters as to why they recommended denial of her promotion. (*See Def.’s Br.*, pp. 4-10; *see also Pl.’s Ex. A* and *Ex. B.*) Notably, several of those reasons were enough *on their own* to deny promotion, without even taking any DEI-related concerns into account. For example, in relation to Plaintiff’s first promotion attempt, the Committee explained that the “Educational Program” section of Plaintiff’s dossier “was weak, especially for an educator striving for level 5 rank.” (*See, e.g., Ex. A*, pp. 1-2.) Further, the Committee explained in that same letter under “Scholarship” that “[n]o awards or recognitions were listed in the Educator activity form. The rank of level 5 requires evidence of peer recognition on the national or international level.” (*Id.* at p. 2.) In relation to Plaintiff’s second promotion attempt, the Committee explained in the section on “Educational Programs” again that “the write up of this section of Molly’s dossier needs the most improvement – especially for an educator striving for the rank of Senior Professional Extension Educator 5.” (*Ex. B*, p. 1.) Similarly, the Committee commented under “Leadership” that “[t]here is implied recognition, but no national or regional awards

were noted which is required for rise to this rank.” (*Id.* at p. 3.) These reasons alone, unrelated to DEI, were enough to deny Plaintiff’s promotion application.

Plaintiff may continue to insist that the “letters suggest Dr. Kelly’s lack of speech aligned with Defendants’ preferred viewpoint was a critical reason” for the promotion denials, (*Pl.’s Opp.*, p. 22), but Plaintiff’s contention is simply not supported by any reasonable reading of the Committee letters.⁶ (*See Exs. A and B.*)

F. Plaintiff fails to sufficiently allege any claims against Defendant Dr. Bendapudi.

If it was somehow not already crystal clear, Plaintiff’s Opposition confirms that Dr. Bendapudi should be dismissed from this lawsuit. Plaintiff fails to adequately plead any personal involvement, direct connection to, or direct responsibility by Dr. Bendapudi for the alleged conduct that she challenges in this case.⁷ (*See Defs.’ Br.*, pp. 31-35.) Rather, Plaintiff’s *single* allegation relating to Dr.

⁶ Moreover, Plaintiff assertions in support are demonstrably incorrect. She alleges that “[i]n the first non-promotion letter . . . , the eleven Promotion Criteria Grid sections are listed. Only three of those sections noted areas for improvement” (*Pl.’s Opp.*, p. 22.) To the contrary, the letter noted significant deficiencies and issues in the areas of (1) Educational Program, (2) Education Delivery, (3) Scholarship, (4) Integrity and Respect, and (5) Civil Rights and Diversity. (*See Ex. A.*) Plaintiff further alleges that “[t]he second non-promotion letter’s accusation of box checking and a failure to show an ‘effort to learn’ feature prominently in the committee’s decision to recommend against promotion,” (*Pl.’s Opp.*, p. 22), but that section comprised less than one short paragraph of the full 3-page letter. (*See Ex. B.*)

⁷ Plaintiff concedes in her Opposition that she sues Dr. Bendapudi and Dr. Hyde solely in their *official capacities*, not their individual capacities. (*Pl.’s Opp.*, p. 26.) Even where only injunctive relief is sought against an individual in their official

Bendapudi in the Amended Complaint is her conclusory assertion that, “[a]s President, she has authority over and responsibility for the policies, practices, and procedures challenged in this Complaint.” (*FAC*, ¶ 10.)

Plaintiff’s Opposition likewise relies entirely on unsupported conclusions and speculation. Specifically, Plaintiff alleges in her Opposition that, simply because Dr. Bendapudi serves in the role of President of the University:

Defendant Bendapudi therefore “directed others”—specifically the committee that reviewed Dr. Kelly’s promotion packets—to violate Dr. Kelly’s First Amendment rights by applying the unconstitutional requirement for promotion, by viewpoint discrimination, and by compelling her to pay lip service to their preferred ideology. Alternatively, as President, she “had knowledge of and acquiesced in” the committee’s violations by allowing the committee to violate Dr. Kelly’s First Amendment rights.

(*Pl.’s Opp.*, p. 23.) As a preliminary matter, none of the above allegations are included in Plaintiff’s Amended Complaint. “[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.” *Com. of Pa. ex rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988) (citation omitted). In any event, these allegations are unsupported and hypothetical—Plaintiff pleads no factual support for her baseless contentions that Dr. Bendapudi directed the Committee in any way or that she “had knowledge of and acquiesced in” the

capacity, such claims are only permissible if a plaintiff sufficiently pleads that the individual “has ‘a direct connection to, or responsibility for, the alleged illegal action.’” *Victorious v. Lanigan*, No. CV 15-6949 (FLW), 2016 WL 2981759, at *6, n. 8 (D.N.J. May 23, 2016) (citations omitted).

Committee’s purported “violations,” because she did not. *Evancho v. Fisher*, 423 F.3d 347, 354 (3d Cir. 2005) (affirming dismissal where “complaint merely hypothesizes that Attorney General Fisher may have been somehow involved simply because of his position as the head of the Office of the Attorney General.”); *Batista v. Williams*, No. 1:23-CV-2028, 2025 WL 648651, at *5 (M.D. Pa. Feb. 3, 2025), *report and recommendation adopted*, No. 1:23CV2028, 2025 WL 642097 (M.D. Pa. Feb. 27, 2025) (“[i]t is not enough to state ‘a mere hypothesis that an individual defendant had personal knowledge of or involvement in depriving the plaintiff of his rights’”) (citation omitted). Accordingly, in the event the Court declines to dismiss Plaintiff’s entire civil action, it should nonetheless dismiss all claims against Dr. Bendapudi, with prejudice.

II. Conclusion.

For the reasons above, and those in Defendants’ opening brief, this Court should dismiss Plaintiff’s entire Amended Complaint, with prejudice.

Respectfully submitted,

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