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PATRICIA GROSSMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PATRICIA GROSSMAN,

Plaintiff,

vs.

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION / AFSCME LOCAL 152;

Civil No. 18-00493-DKW-RT

**PLAINTIFF'S REPLY TO DAVID
LASSNER'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
PLAINTIFF'S OPPOSITION TO**

DAVID LASSNER, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE
UNIVERSITY OF HAWAII; AND CLARE
E. CONNORS, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL
OF HAWAII,

Defendants.

**LASSNER’S CROSS-MOTION FOR
SUMMARY JUDGMENT (DKT. 66)**

Hearing: Friday, January 24, 2020

Time: 9:30 A.M.

Judge: Derrick K. Watson

INTRODUCTION

Plaintiff, Patricia Grossman, submits this Reply to the Opposition of Defendant University of Hawaii President David Lassner to Plaintiff’s Motion for Summary Judgment and submits this Opposition to Lassner’s Cross-Motion for Summary Judgment (“UH MSJ”) (Dkt. 66). Plaintiff incorporates her arguments from her own Memorandum of Law in Support of Motion for Summary Judgment (“Plaintiff MSJ”) (Dkt. 60-1) on Count I of her Complaint because she anticipated many of Lassner’s arguments and addressed them forthwith.

STATEMENT OF MATERIAL FACTS

To facilitate the Court in determining judgment as a matter of law, the parties entered a joint Stipulation Regarding Undisputed Facts (“UF”) (Dkt. 57). In filing its cross-motion for summary judgment, Lassner introduced three additional alleged facts. *See* Lassner’s Statement of Additional Facts, (Dkt. 67 at 4) (“Lassner SAF”). Plaintiff addresses the additional alleged facts one-by-one below, according to their numbered paragraphs in the Lassner SAF.

24. As of July 2018, DAGS [Department of Accounting and General Services] has taken over from the University of Hawai‘i the deduction of HGEA dues for University employees.

Plaintiff is without personal knowledge of the University of Hawaii internal processes. To the extent a response is required, Plaintiff denies that this fact would be material, if true.

25. HGEA and DAGS coordinate between themselves the deduction of HGEA dues for University employees within that union.

Plaintiff is without personal knowledge of the University of Hawaii internal processes. To the extent a response is required, Plaintiff denies that this fact would be material, if true.

26. This arrangement has been continuous from July 2018 to present for each payroll period and is intended to continue into the future.

Plaintiff is without personal knowledge of the University of Hawaii internal processes. To the extent a response is required, Plaintiff denies that this fact would be material, if true.

ARGUMENT

I. Grossman’s claims for declaratory relief were not mooted by UTLA’s gamesmanship.

Lassner begins by arguing that he is not acting under color of state law. This is a nonsensical claim from the president of a state university. As explained at

greater length in Grossman's Reply and Opposition to HGEA in Sections I.A. and III.C., filed concurrently with this Reply and Opposition, actions taken by state officials pursuant to a state statute constitute state action. When state officials use the state payroll system to deduct dues from state-issued paychecks of state university employees, that is the very definition of state action required for a suit brought under 42 U.S.C. § 1983. Moreover, the time limitations on union membership withdrawal that Lassner enforced against Grossman were asserted pursuant to a state statute, Hawaii Act 7 (2018) ("Act 7"). *See* HRS §89-4(c).

What this portion of Lassner's brief appears to argue, in substance, is not that he is not a state actor, but rather that another state actor also handled Grossman's payroll deductions: DAGS. Even if this newly alleged fact were true, it does not do the work Lassner wants it to.

Lassner's own additional facts claim that "as of July 2018, DAGS has taken over from the University of Hawai'i the deduction of HGEA dues for University Employees." Therefore, by Lassner's own admission, he was responsible for the deduction of Grossman's dues for many years prior to July 2018. In her Complaint, Grossman pled recovery of the union dues illegally taken from her throughout the

entire period of her employment by the University of Hawaii. Lassner is, therefore, a proper defendant in this case.¹

II. Grossman retains a live claim for declaratory relief.

Lassner's second argument is that Grossman's claims are moot because HGEA finally let her out of the union once Grossman filed this lawsuit. This argument is indistinguishable from the HGEA arguments Grossman has already refuted in her own motion, Plaintiff MSJ at 12-16, and in her Reply and Opposition to HGEA in Sections II. and IV.A., filed concurrently with this Reply and Opposition. Out of respect for the Court's time, Grossman, hereby, incorporates those arguments by reference rather than repeating them.

CONCLUSION

For the foregoing reasons, this Court should deny Lassner's Motion for Summary Judgment and grant Grossman's Motion for Summary Judgment.

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¹ He is also a proper defendant because Count II of Grossman's Complaint, which was dismissed by this Court, relates to his negotiations with the Union. Even if that is not presently relevant to the case, he will remain a necessary party on appeal from that ruling.

DATED: Honolulu, Hawaii, December 9, 2019.

Respectfully submitted,

DAMON KEY LEONG KUPCHAK HASTERT

/s/ Robert H. Thomas

ROBERT H. THOMAS

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Defendants.

Civil No. 18-00493-DKW-RT

CERTIFICATE OF SERVICE

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I hereby certify that on this date, a copy of Plaintiff's Reply To David Lassner's Opposition To Plaintiff's Motion For Summary Judgment And Plaintiff's Opposition To Lassner's Cross-Motion For Summary Judgment (Dkt. 66) was duly served electronically through CM/ECF upon the following:

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DATED: Honolulu, Hawaii, December 9, 2019.

Respectfully submitted,
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/s/ Robert H. Thomas
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