

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BETHEL MINISTRIES, INC.,

Plaintiffs,

v.

DR. KAREN B. SALMON, ET AL.,

Defendants.

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No. 1:19-cv-01853-SAG

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MOTION TO ALTER OR AMEND JUDGMENT

Defendants, State Superintendent Mohammed Choudhury and the members of the the Broadening Options and Opportunities for Students Today (“BOOST”) Advisory Board Mathew Gallagher, Marva Jo Camp, Linda Eberhart, Dr. Nancy S. Grasmick, Elizabeth Green, Beth Sandbower Harbinson, and Dr. A. Skipp Sanders, all sued in their official capacities, by their undersigned attorneys and pursuant to Rules 59(e) and 60 of the Federal Rules of Civil Procedure, hereby move for amendment of the Court’s December 10, 2021 judgment to dispose of all claims asserted in the complaint. The grounds for this motion are set forth in the Memorandum of Law filed herewith and incorporated by reference herein.

WHEREFORE, for the reasons stated herein, defendants respectfully request that the Court issue an order amending its December 10, 2021 judgment and dismissing Counts I, III, IV, V and VI of the complaint.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Robert A. Scott

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January 7, 2022

Attorneys for Defendants

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**MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND JUDGMENT**

On December 10, 2021, this Court entered a judgment awarding declaratory and injunctive relief to Plaintiff Bethel Ministries, Inc. (“Bethel”) on fewer than all of the claims asserted in the complaint. Specifically, although the complaint asserted six causes of action based on various legal theories, the Court entered judgment as to Count II only. (ECF 91). The Court declined to rule on Bethel’s other five causes of action. As set forth below, this creates uncertainty as to whether the Court’s judgment is final for purposes of appeal. Accordingly, defendants respectfully request that the Court amend its order pursuant to Rule 59(e) and/or Rule 60 of the Federal Rules of Civil Procedure to dispose of all claims.

PROCEDERUAL BACKGROUND

Bethel’s complaint asserted six causes of action based on Bethel’s disqualification from the BOOST school voucher program: Count I for alleged violation of the Free Exercise Clause of the First Amendment to the United States Constitution; Count II for

alleged violation of the Free Speech Clause of the First Amendment; Count III for alleged violation of the Due Process Clause (void for vagueness); Count IV for alleged violation of the Due Process Clause (parental rights); Count V for alleged violation of the Equal Protection Clause; and Count VI for alleged violation of the Establishment Clause. (ECF 1.) Based on these claims, Bethel sought declaratory and injunctive relief. (ECF 1.)

After extensive discovery, both sides moved for summary judgment on all claims. (ECF 75; ECF 80; ECF 83; ECF 86.) On December 10, 2021, the Court issued a memorandum opinion and order, granting Bethel's motion for summary judgment and denying defendants' motion for summary judgment as to Count II only. (ECF 91.) The Court declined to address the other five claims in Bethel's complaint. (ECF 91.)

LEGAL ARGUMENT

The Court has discretion, under the Declaratory Judgment Act, to decline to issue declaratory relief as to certain claims in Bethel's complaint. *See* 28 U.S.C. § 2201(a) (providing that district courts “*may* declare the rights and other legal relations of any interested party seeking such a declaration, regardless of whether or not further relief is or could be sought”) (emphasis added); *United Capitol Ins. Co. v. Kapiloff*, 155 F.3d 488, 493 (4th Cir. 1998) (observing that “district courts have great latitude in determining whether to assert jurisdiction over declaratory judgment actions”) (internal citations and quotation marks omitted).

If a Court declines to decide a declaratory judgment claim, that undecided claim should be dismissed or, if a parallel state court proceeding exists, stayed. *See Centennial Life Ins. Co. v. Poston*, 88 F.3d 255, 257 (4th Cir. 1996) (“[A] district court is authorized,

in the sound exercise of its discretion, to stay or to dismiss an action seeking a declaratory judgment” (citation omitted)).¹

Failure to dismiss the undecided counts in Bethel’s complaint creates uncertainty as to whether the judgment is final for purposes of appeal. *See* Fed. R. Civ. Proc. 54(b) (providing that “any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities”); *Burger King Corp. v. Horn and Hardart Co.*, 893 F.2d 525, 527 (2nd Cir. 1990) (holding that initial judgment appealed from was not final because it did not dispose of defendant’s declaratory judgment counterclaims); *see also Peterson v. Lindner*, 765 F.2d 698, 704 (7th Cir. 1985) (“[D]eclaratory judgments should be treated like other judgments for purposes of determining finality.”).

In *Zhejiang Med. Co. v. Kaneka Corp.*, the plaintiff moved to amend the judgment after trial because the court had only entered judgment for the plaintiff on one of its two declaratory judgment claims. No. 4:11-CV-1052, 2018 WL 10966054, at *2 (S.D. Tex. Feb. 22, 2018). The court granted the motion, stating that a declaratory judgment “is not

¹ A stay is appropriate where there exists a parallel proceeding that, when decided, will resolve the parties’ dispute. *Wilderman v. Cooper & Scully, P.C.*, 428 F.3d 474, 476 (3d Cir. 2005). Here, there is no parallel proceeding. Hence, the Court should dismiss the undecided counts in Bethel’s complaint.

final until the Court addresses each and every claim.” *Id.* (citing *International Elec. Tech. Corp. v. Hughes Aircraft Co.*, 476 F.3d 1329, 1330 (Fed. Cir. 2007)).

If it was the Court’s intent to exercise its discretion to decline to decide the claims asserted in Counts II, III, IV, V and VI of Bethel’s complaint, those claims should be dismissed. *Burger King Corp.*, 893 F.2d at 527; *Zhejiang Med. Co.*, 2018 WL 10966054 at *2.

CONCLUSION

For all of the forgoing reasons, defendants request that the Court issue an order amending its December 10, 2021 judgment and dismissing Counts I, III, IV, V and VI of the complaint.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Robert A. Scott

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AMENDED ORDER OF JUDGMENT

UPON CONSIDERATION of Defendants’ motion to alter or amend judgment filed on January 7, 2022 (the “Motion”), and all responses and replies thereto, it is this _____ day of _____, 2022, hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Court’s Order of Judgment, dated December 10, 2021 is amended as follows:

- A. For reasons set forth in the Court’s December 10, 2021 Memorandum Opinion, Bethel’s motion for summary judgment, ECF 80, is GRANTED as to Count II, and Defendants’ motion for summary judgment, ECF 75, is DENIED as to Count II. The Court therefore declares that Defendants’ application of the 2018 iteration of the BOOST nondiscrimination provision to exclude Bethel from BOOST eligibility for the 2018-2019 and 2019-2020 school years violated Bethel’s First Amendment rights. Further, Defendants

are enjoined from demanding that Bethel repay the \$102,600 Bethel previously received in BOOST funding.

- B. The Court declines to exercise its discretionary jurisdiction under 28 U.S.C. § 2201(a) with respect to the parties' rights and legal obligations asserted under Counts I, III, IV, V, and VI of the complaint. Accordingly, those counts are dismissed.
- C. Bethel claims an entitlement to its reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988. ECF 1 at 36. By separate order, the Court has issued a schedule for the filing of Bethel's petition on fees, costs, and expenses, and the Defendants' response thereto.

Stephanie A. Gallagher
United States District Judge