

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

MUSLIM COMMUNITY
ASSOCIATION OF ANN ARBOR AND
VICINITY, a/k/a MCA, Michigan Islamic
Academy, a/k/a MIA,

Plaintiff,

v.

PITTSFIELD TOWNSHIP; *et al.*,
Defendants.

No. 2:12-cv-10803-PJD-DRG

NON-PARTY ZABA DAVIS'
REPLY IN SUPPORT OF
MOTION TO QUASH AND FOR
PROTECTIVE ORDER

Hon. Patrick J. Duggan

Magistrate Judge David R. Grand

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ISSUE PRESENTED

Whether the Court should quash Plaintiff's subpoenas and issue an order protecting Ms. Davis from any further annoying, harassing, irrelevant, oppressive, and burdensome discovery demands.

CONTROLLING AND MOST APPROPRIATE AUTHORITY

Fed. R. Civ. P. 26

Fed. R. Civ. P. 45

Plaintiff's¹ claim that it is simply engaging in a benign discovery request for relevant information from a nonparty is belied by Plaintiff's very own discovery demands and the relevant law.² Here, Plaintiff is targeting a private citizen, whose only involvement in this matter was to engage in constitutionally protected speech activity, with irrelevant and vexatious discovery demands because she rightfully opposed Plaintiff's zoning request. Plaintiff's harassing and overbroad discovery demands and its inability to cite *any* relevant law to support its assertion that the information it seeks is even remotely relevant to its claims arising out of a *zoning dispute* with the Township plainly demonstrate that the motion to quash should be granted and a protective order issued.

As an initial matter, despite Plaintiff's facially overbroad discovery demands, it appears from Plaintiff's response to Ms. Davis' motion that Plaintiff believes that Ms. Davis' testimony is relevant because she apparently "disseminated . . . leaflets to neighborhood homes" at the request of Deborah

¹ Plaintiff filed its opposition to Ms. Davis' motion under seal on May 2, 2014 (Doc. No. 94). Despite repeated requests from Ms. Davis' counsel, Plaintiff's counsel has refused to serve Ms. Davis' counsel with a copy of the documents filed with this Court under seal. In effect, Plaintiff's counsel is engaging in an *ex parte* communication with the Court, which is prohibited, and is placing Ms. Davis at a serious disadvantage in this matter. The Court should sanction this conduct.

² Plaintiff's claim is also belied by the fact that Ms. Davis' counsel is representing six other Township residents who received *identical* subpoenas from Plaintiff's counsel demanding the *very same documents*. (Muise Decl. ¶¶ 2-3 at Ex. 1). Counsel sent timely objections to these additional document subpoenas on April 15, 2014, and Plaintiff's counsel has apparently abandoned those requests. (Muise Decl. ¶¶ 3-4 at Ex. 1).

Williams, the Planning Commissioner for the Township. That “the persons who distributed Commissioner Williams’ leaflets purposefully avoided the homes of Muslim families, possibly at the behest of Commissioner Williams.” And that this constitutes “facts that would support the conclusion that *Commissioner Williams* acted out of animus.” (Pl.’s Resp. at 1, 9 [Doc. No. 95]) (emphasis added). Plaintiff then seeks to assure this Court that it “is not interested in Ms. Davis. Rather, Plaintiff is interested in the information she likely possesses about the efforts of and intentions behind Commissioner Williams’ unprecedented, undisclosed, and successful campaign against Plaintiff’s rezoning application.” (Pl.’s Resp. at 11 [Doc. No. 95]). But Plaintiff does not stop there. Plaintiff apparently demands information about whether Ms. Davis was also working with outside “organizations widely considered to be anti-Muslim, and which have previously been involved in garnering opposition to zoning requests of other Islamic institutions around the country.” (Pl.’s Resp. at 11 [Doc. No. 95]). And thus, Plaintiff demands information regarding “whether [Ms. Davis’] work with Commissioner Williams was part of a broader effort guided or supported by anti-Muslim groups who seized the opportunity of a Pittsfield Township official who was willing to abandon the neutrality her position required in order to foment opposition to Plaintiff’s rezoning application.” (Pl.’s Resp. at 11 [Doc. No. 95]).

Indeed, Plaintiff makes no claim whatsoever that Ms. Davis engaged in any

wrongdoing, aided and abetted any wrongdoing, or conspired to engage in any wrongdoing. And we know this precisely because Plaintiff tells us so: “Nor has Plaintiff sought discovery from Ms. Zaba Davis because Plaintiff wishes to join her as a Defendant in this action or because Plaintiff suspects her of any wrongdoing.” (Pl.’s Resp. at 6 [Doc. No. 95]) (emphasis added). As Ms. Davis demonstrated in her motion (and Plaintiff apparently concedes here), all of Ms. Davis’ actions related in any way to the zoning issue in this case are lawful activities. Indeed, they are activities protected by the First Amendment.³ And perhaps more to the point regarding Plaintiff’s legal claims in this matter, Plaintiff’s Second Amended Complaint—the extant pleading in this case—does not even name Deborah Williams as a defendant in this matter.

What is even more relevant to the motion to quash is the impropriety of Plaintiff’s discovery demands as highlighted by Judge Duggan’s Opinion and Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss Plaintiff’s Second Amended Complaint [Doc. No. 58]. In that order, Judge Duggan was quite explicit: the information that Plaintiff seeks here regarding any

³ There can be no dispute that speaking at a public hearing, signing a petition, circulating a petition, or associating with others to engage in these activities are constitutionally protected. *Connick v. Myers*, 461 U.S. 138, 145 (1983) (holding that “speech on public issues . . . is entitled to special protection”); *Doe v. Reed*, 130 S. Ct. 2811, 2817 (2010) (signing a petition is political speech); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984) (holding that the “freedom to engage in group effort” “to petition the government” is protected by the First Amendment).

alleged actions of Deborah Williams (let alone any actions related to Ms. Davis or her neighbors) is not relevant to Plaintiff's claims. In fact, Judge Duggan admonished Plaintiff for attempting to bootstrap to its claims against the Township's Board of Trustees anything related to the Planning Commission, let alone one member of the Commission, albeit the commissioner, stating: "The Court is somewhat troubled by the fact that Plaintiff's allegations concerning purported similarly situated comparators relate to treatment by the Township's Planning Commission whose members are not defendants in this action and where the Township's Board of Trustees is the entity with ultimate authority to decide whether to grant or deny a zoning application." (Op. & Order at 26 n.9 [Doc. No. 58]) (emphasis added). Thus, Plaintiff wants to contrive some sort of anti-Muslim victim narrative based on the fact that private citizens exercised their fundamental right to oppose Plaintiff's proposed zoning application.⁴ None of these citizens (nor the Township's Planning Commissioner for that matter) had any authority to ultimately approve or reject Plaintiff's proposal. The Board of Trustees is the only

⁴ Not surprising, Plaintiff's victim narrative is simply not true. Ms. Davis did not distribute leaflets related to this matter. And she assisted with circulating a petition in her neighborhood *at the request of another neighbor, not* Ms. Williams (n.b.: Plaintiff does not claim that Ms. Williams had anything to do with the neighborhood petition). Moreover, in the two blocks where she helped circulate *the petition*, Ms. Davis did not "purposefully avoid[] the homes of Muslim families." In fact, Ms. Davis does not even know which homes, if any, are occupied by Muslim families in the two blocks where she did circulate the petition. In short, Plaintiff's claim that Ms. Davis can provide evidence of an anti-Muslim animus is false. (See Davis Supp. Decl. ¶¶ 1-3 at Ex. 2).

entity with that authority. *Id.* In short, this is a fishing expedition in a barren and entirely irrelevant pond. And Plaintiff certainly knew this when Judge Duggan rejected its arguments more than a year ago, further justifying Ms. Davis' request for attorneys' fees and costs in this matter. *See* Fed. R. Civ. P. 26(c)(3) & 37(a)(5).

In fact, the lack of any relevant case law to support Plaintiff's bald assertion that the information it seeks from Ms. Davis, a nonparty, is relevant to its claims compels this Court to grant Ms. Davis' motion. Indeed, the only case Plaintiff references in support of its claim that the information sought is somehow relevant in this case is *Awad v. Ziriax*, 966 F. Supp. 2d 1198 (W.D. Okla. 2013), which involved a constitutional challenge to a ballot initiative submitted to the Oklahoma voters that expressly targeted for disfavored treatment "Shariah law," which is Islamic law. (Pl.'s Resp. at 12 [Doc. No. 95]). Plaintiff cites this case as support for the claim that "[s]uch animus-based activities, even when undertaken by private citizens, can be a legitimate subject of judicial review to the extent they are relevant to the determination of discriminatory intent." (Pl.'s Resp. at 11-12 [Doc. No. 95]). The glaring problem with Plaintiff's assertion, aside from the fact that Ms. Davis' activities are not "animus-based activities," is that the only reason the Oklahoma federal court even considered "public debate, public discussions, radio ads and robocalls" in the first instance is because the defendants argued, in the alternative, that the court should sever the offending language in the proposed

amendment, leaving as much of the amendment intact as possible. As the court noted, “because the proposed amendment to the Oklahoma Constitution was a ballot initiative submitted to the Oklahoma voters, the amendment is not severable if plaintiffs can show that the voters would not have approved the amendment without the unconstitutional provisions. The intention of the voter is to be ascertained from the language of his ballot interpreted in the light of the circumstances of a public nature surrounding the election.” *Id.* at 1205-06 (internal quotations, punctuation, and citation omitted) (emphasis added). In short, *Awad v. Ziriox* provides no support for Plaintiff’s claim here, which involves a decision by the Board of Trustees to deny Plaintiff’s zoning request—a decision for which the “voters” played no part.

In the final analysis, there is no question that nonparties are afforded greater protection from discovery than a normal party. Accordingly, courts considering nonparty subpoenas “require a stronger showing of relevance than for simple party discovery.” *Stamy v. Packer*, 138 F.R.D. 412, 419 (D.N.J. 1990); *Solarex Corp. v. Arco Solar, Inc.*, 121 F.R.D. 163, 179 (E.D.N.Y. 1988) (considering nonparty status a significant factor when deciding discovery dispute). And there is no question that Plaintiff’s discovery demands directly implicate Ms. Davis’s First Amendment rights. *See NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (acknowledging the “restraint on freedom of association” that is caused by

“compelled disclosure of affiliation with groups engaged in advocacy”); *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (recognizing the “significant encroachment on First Amendment rights” of compelled disclosure); *Britt v. Superior Court of San Diego Cnty.*, 574 P.2d 766, 774 (Cal. 1978) (observing that “the threat to First Amendment rights may be more severe in a discovery context”). Consequently, the chilling effect created by forced disclosure of First Amendment activities “must be balanced against the interests in obtaining the information.” *Australia/Eastern U.S.A. Shipping Conference v. United States*, 537 F. Supp. 807, 810 (D.D.C. 1982). Thus, because Ms. Davis has made “a showing of some probability of implicating First Amendment rights,” Plaintiff has “the burden of showing that the balance of interest weighs in favor of disclosure,” *ETSI Pipeline Project v. Burlington Northern, Inc.*, 674 F. Supp. 1489, 1490 (D.D.C. 1987)—a showing which it cannot make and certainly has not made here, as demonstrated above.

CONCLUSION

For the foregoing reasons, Ms. Davis respectfully requests that the Court grant her motion and award her attorneys’ fees and costs.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2014, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system.

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