

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

TIANA ARMSTRONG,	:	3:04cv360(WWE)
Plaintiff,	:	
	:	
v.	:	
STATE OF CONNECTICUT	:	
DEPARTMENT OF CHILDREN AND	:	
FAMILIES JUVENILE TRAINING	:	
SCHOOL; and PAULA ZAHN,	:	
Defendant.	:	

**RULING ON DEFENDANTS' MOTION TO DISMISS**

This is an action concerning alleged discrimination by the defendants, Ingrid Zahn and the State of Connecticut Department of Children and Families Juvenile Training School ("DCF"), that resulted in plaintiff Tiana Armstrong's termination. Plaintiff alleges that (1) defendant DCF violated Title VII, (2) defendant Ingrid Zahn violated 42 U.S.C. Section 1981 by interfering with plaintiff's right to make and enforce contracts, and (3) defendants violated 42 U.S.C. Section 1983 by denying plaintiff's equal protection of the law and retaliating against her for exercise of her First Amendment right to free speech.

The defendants have filed a motion to dismiss, which does not address the complaint in its entirety. For the following reasons, the motion to dismiss will be granted in part and denied in part.

## DISCUSSION

A motion for summary judgment will be granted where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "Only when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F. 2d 979, 982 (2d Cir.), cert. denied, 502 U.S. 849 (1991).

The burden is on the moving party to demonstrate the absence of any material factual issue genuinely in dispute. American International Group, Inc. v. London American International Corp., 664 F. 2d 348, 351 (2d Cir. 1981). In determining whether a genuine factual issue exists, the court must resolve all ambiguities and draw all reasonable inferences against the moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). If a nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof, then summary judgment is appropriate. Celotex Corp., 477 U.S. at 323. If the nonmoving party submits evidence which is "merely colorable," legally sufficient opposition to the motion for summary judgment is not met. Anderson, 477 U.S. at 249.

### Violation of the First Amendment

Defendants move to dismiss the First Amendment retaliation claim on the grounds that (1) plaintiff's speech was not a matter of public concern, (2) her speech was not a motivating factor in her discharge, and (3) the state would have made the same decision even in the absence of the plaintiff's protected speech. These arguments are more appropriate to an inquiry on a motion for summary judgment. The motion to dismiss will be denied as to the merits of the First Amendment retaliation claim.

### Eleventh Amendment

Defendants argue that plaintiff's Section 1983 claims are barred by the Eleventh Amendment of the United States Constitution. Generally, a suit for recovery of money may not be maintained against the state itself, or against any agency or department of the state, unless the state has waived its sovereign immunity under the Eleventh Amendment. See Florida Dep't of State v. Treasure Salvors, 458 U.S. 670, 684 (1982). Section 1983 does not override a state's Eleventh Amendment immunity. See Quern v. Jordan, 440 U.S. 332, 342 (1979). The Eleventh Amendment immunity which protects the state from suits for monetary relief also protects state officials sued for damages in their official capacity. See Kentucky v. Graham,

473 U.S. 159 (1985). A suit against a defendant in his or her official capacity is ultimately a suit against the state if any recovery would be expended from the public treasury. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101 n.11 (1984).

In her complaint, the plaintiff states that she seeks compensatory and punitive damages. Upon review of her Section 1983 claim, the court cannot discern whether plaintiff has sued both defendants or only defendant Zahn. Accordingly, to the extent that plaintiff alleges Section 1983 claims against defendant Zahn in her official capacity and against DCF, such claims are barred by the Eleventh Amendment and will be dismissed.

#### Section 1981

Defendants assert that plaintiff's Section 1981 claim should be dismissed to the extent that it seeks relief from DCF or defendant Zahn in her official capacity. Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701 (1989). The plaintiff has posed no opposition to this argument. Accordingly, to the extent that the complaint can be construed to contain claims pursuant to Section 1981 against DCF and Zahn in her official capacity, such claims will be dismissed.

#### Title VII

Defendants seek to have any Title VII claim against defendant Zahn dismissed. Since the complaint does not assert any Title VII claim against Ms. Zahn, the defendants' argument will be denied as moot.

Qualified Immunity

Defendants argue that Ms. Zahn is entitled to qualified immunity. However, the court's inquiry into application of qualified immunity requires a review of factual evidence and is more appropriate on a motion for summary judgment. The motion to dismiss will be denied on the basis of qualified immunity.

CONCLUSION

For the foregoing reasons, the Motion to Dismiss [#6] is GRANTED in part, and DENIED in part. The Section 1981 and 1983 claims for damages against DCF and defendant Zahn in her official capacity are dismissed. Plaintiff is instructed to amend her complaint to clarify the capacity in which she has sued Ms. Zahn and the relief sought in counts two and three.

SO ORDERED.

\_\_\_\_\_/s/\_\_\_\_\_  
WARREN W. EGINTON  
SENIOR UNITED STATES DISTRICT JUDGE

Dated at Bridgeport, Connecticut this 12th day of May, 2004.