IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:07-CV-64-H

MICHAEL S. ADAMS Plaintiff, v. THE TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA-WILMINGTON, et al., Defendants.	)	**ORDER**

This matter is before the court on defendants' summary judgment motion following partial remand from the Fourth Circuit Court of Appeals for further proceedings consistent with the Fourth Circuit's decision. Adams v. Trs. of the Univ. of N. Carolina-Wilmington, 640 F.3d 550 (4th Cir. 2011). Plaintiff has responded, and defendants have replied. This matter is ripe for adjudication.

BACKGROUND

Plaintiff brought three claims against the sixteen defendants alleging religious and speech-based discrimination as well as retaliation in relation to the decision not to promote him to the position of full professor. This court granted defendants' original motion for summary judgment on all claims,

concluding they were entitled to judgment as a matter of law. On appeal, the Fourth Circuit affirmed in part and reversed and remanded in part the judgment of this court.

The University of North Carolina-Wilmington (UNCW) hired plaintiff, Michael S. Adams, in 1993 as an assistant professor of criminology in the Department of Sociology and Criminal Justice. Over the next several years, he earned strong teaching evaluations, received two faculty awards, published several articles and was involved in many service activities to both the university and the community. In 1998, Adams was promoted to the tenured position of associate professor.

In 2000, Adams converted to Christianity, a conversion which had a profound effect on his views on political and social issues. He began to speak out about his views, becoming a regular columnist for Townhall.com and appearing on radio and television broadcasts as a commentator. He also published a book, a collection of his previously published columns. Adams' newfound views and his speaking out on these issues led to some tension on campus. Some employees expressed discomfort with his views and his manner of expressing them. At one point, the interim department chair suggested Adams alter his "tone" to make it more "cerebral" and less "caustic."

In 2004, Adams applied for promotion to the position of full professor. Because UNCW's promotion process is self-initiated, Adams could apply at any time; an advertised opening was not required. Applicants for full professor are evaluated in the areas of teaching, research, service, and scholarship and professional development. In addition to standard information such as education, work history, courses taught, peer evaluations, and honors received, Adams' application listed ten publications he had authored known as "refereed publications" in academia. He also cited some of his external writings and appearances, many of which were controversial like his column for Townhall.com. He also listed his service as an activist on campus for the free speech movement. It is these external writings, appearances and service which constitute the "speech" at issue in this matter. Adams' application for promotion to full professor was denied, citing an inadequate scholarly research record as the overriding concern.

Now before the court is defendants' motion for summary judgment on plaintiff's remaining claims of viewpoint discrimination and retaliation which were remanded by the Fourth Circuit.

COURT'S DISCUSSION

In Pickering v. Board of Education, 391 U.S. 563 (1968) and Connick v. Myers, 461 U.S. 138 (1983), the Supreme Court analyzed the competing interests at play between the public employee "as a citizen, in commenting upon matters of public concern" and the government, "as an employer, in promoting the efficiency of the public services it performs through its employees." Connick, 461 U.S. at 142 (quoting Pickering, 391 U.S. at 568). In McVey v. Stacy, 157 F.3d 271 (4th Cir. 1998), the Fourth Circuit laid out the test for balancing the Pickering and Connick competing interests in the context of a retaliation claim. The McVey test requires this court to determine:

> (1) whether the public employee was speaking as a citizen upon a matter of public concern or as an employee about a matter of personal interest; (2) whether the employee's interest in speaking upon the matter of public concern outweighed the government's interest in providing effective and efficient services to the public; and (3) whether the employee's speech was a substantial factor in the employee's [adverse employment] decision.

McVey, 157 F.3d at 277-78.

While this court found that plaintiff failed to meet the first element of the McVey test and therefore granted summary judgment, the Court of Appeals concluded "Adams' speech was clearly that of a citizen speaking on a matter of public

concern." Adams, 640 F.3d 550, 565. Finding that Adams satisfied the first McVey prong as a matter of law, the Court of Appeals remanded the matter to this court to address whether the second and third prongs of the McVey test are met in this case.

In their summary judgment motion, the defendants do not address the second prong of the McVey test—whether Adams' interest in speaking upon the matter of public concern outweighed the government's interest in providing effective and efficient services to the public. Plaintiff's speech involved "serious and substantial issue[s] of public concern" and therefore the employer must make an even stronger showing of disruption. Love-Lane v. Martin, 355 F.3d 766, 778 (4th Cir. 2004) (citing Connick, 461 U.S. at 152). Defendants have failed to make any such showing.

The third factor of the McVey test is whether the employee's speech was a substantial factor in the adverse decision. This causation prong "can be decided on 'summary judgment only in those instances where there are no causal facts in dispute.'" Love-Lane v. Martin, 355 F.3d 766, 776 (4th Cir. 2004) (quoting Goldstein v. Chestnut Ridge Volunteer Fire Co., 218 F.3d 337, 352 (4th Cir. 2000). This factor is met where plaintiff shows the speech was a "substantial" or "motivating" factor in the employment decision. Wagner v. Wheeler, 13 F.3d

86, 90 (4th Cir. 1993)(citing Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977)). In order to avoid liability, a defendant may then show, by a preponderance of the evidence, that the same decision would have been made absent the protected expression. Id. ("[M]ore simply, the protected speech was not the 'but for' cause of the termination.").

Here, plaintiff has brought forth evidence from which a reasonable jury could find that his speech was a substantial or motivating factor in the decision to deny tenure to plaintiff. The court need not detail the evidence, but plaintiff has produced evidence which, taken in the light most favorable to plaintiff, shows the following: (1) his internal evaluations declined after he began the speech at issue; (2) faculty attempted to stop or alter his speech; (3) the denial of his application to full professor was in temporal proximity to Adams' columns openly criticizing the University on certain political and social issues; (4) the written comments of the faculty on the tenure decision committee show hostility toward plaintiff's speech; and, (5) a faculty member who had accused plaintiff of harassment was allowed to participate and vote on the plaintiff's application for promotion.

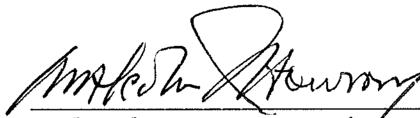
In the light most favorable to plaintiff, plaintiff has brought forth facts showing that the plaintiff's protected

speech was a substantial factor in the promotion decision. Although defendants have produced some evidence suggesting reasons for the denial apart from Adams' protected speech, there remain genuine issues of material fact which preclude summary judgment. See Love-Lane v. Martin, 355 F.3d 766, 776 (4th Cir. 2004) (finding summary judgment inappropriate where there was a genuine issue of material fact as to whether plaintiff's speech was a substantial factor in the adverse employment decision).

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is DENIED. This matter is hereby scheduled for pretrial conference during Judge Howard's August 19, 2013, civil term. A specific trial date will be set at or following the pretrial conference, with trial to commence no sooner than two (2) weeks after the pretrial conference.

This 22nd day of March 2013.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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