(ORDER LIST: 604 U.S.)

MONDAY, OCTOBER 7, 2024

CERTIORARI GRANTED

24-0514 MCMILLAN V. BOARD OF REGENTS OF CITY UNIVERSITY OF LANTANA

The petition for writ of certiorari is granted limited to the following questions: 1) When a trial judge amends a final judgment, does the time for filing a post-judgment motion challenging unchanged portions of the judgment run from entry of the original final judgment or the amendment? 2) Does a University violate the First Amendment by adopting a viewpoint-neutral policy of refusing to discipline students who interfere with speakers on campus?

Appendix to
Petition for Writ of Certiorari

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

No. 22-0514

BOARD OF REGENTS OF
CITY UNIVERSITY OF LANTANA,
Defendant–Appellant,

v.

DOVE MCMILLAN,
Plaintiff–Appellee.

Filed: May 10, 2023

Appeal from the United States District Court
for the District of New Tejas
(D.C. No. 20-cv-1857)

Before SINCLAIR, ARROFORD, and CARSON, Circuit Judges.

OPINION

SINCLAIR, Circuit Judge.

This appeal concerns whether the Constitution entitles a party to the protection of law enforcement, an issue long settled by the Supreme Court. Before reaching that question, however, we must first resolve a procedural question regarding the timeliness of the renewed motion for judgment as a matter of law.

Concluding that the University's motion was timely and its arguments meritorious, we REVERSE the denial of the University's motion for judgment as a matter of law and RENDER judgment in favor of the University.

Background

This matter concerns student misconduct and discipline at the City University of Lantana (the "University"), one of the oldest and most preeminent educational public institutions in New Tejas.[1]

Since its founding in 1849, the University has served generations of students, including almost every governor of New Tejas. From its inception, the University was intended to be a coeducational institution open to everyone. The City of Lantana originally set aside 15 acres of land just north of the city center for the University. Construction was completed in 1851 on the first permanent building on the University campus, named New Tejas Hall. The Hall now houses the school's library, science and technology classrooms, and the Hedge Family Auditorium. Through a series of alumni donations and various land purchases over the years, the University has added almost 175 additional acres, a variety of educational buildings, athletic facilities, dormitories, three on-campus dining halls, and other student-centered locations.

The University is committed to academic excellence, civic engagement, and leadership for the common good.

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[1] City University of Lantana is chartered by the City of Lantana. It is undisputed that (1) the University is a public institution, subject to the First Amendment; and (2) as a municipal institution, the University does not benefit from sovereign immunity.

The school motto *Doctrina Perpetua*—"Forever Learning"—reflects this intellectual commitment. The school also has a proud history of athletic excellence. The sports teams are known as the Scorpions, and the University is especially proud of its men's football team, a frequent contender for the national championship.

The main student newspaper on campus is the *Stinger*, which is published weekly. The *Stinger* was founded in 1914 and has published every year since then. The University also offers over 60 student organizations on campus, including arts and culture organizations, performance groups, intramural sports groups, political organizations, gender and sexuality groups, religious organizations, and social action groups.

Despite these proud traditions, in recent years, the behavior of students at the University can be charitably described as "rowdy." Senior pranks have gotten far out of hand, including leaving 100 chickens in the Hedge Family Auditorium, creating a slip n' slide down the central staircase and continuing onto the University front lawn, and (through means not yet explained) placing a car on the roof of New Tejas Hall. Unauthorized and outrageous parties have, with some regularity, disrupted classes and other scheduled events. And the University surely did not anticipate "keg stands" during one of its graduation events.[2]

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[2] "A City University of Lantana student was taken to the hospital over the weekend with serious injuries that he sustained during one of this year's graduation events. Eyewitnesses said the student struck his head on a metal table at a graduation reception after performing a 'keg stand' (in which someone does a handstand over a beer

Evidence presented at trial revealed that none of these incidents—or numerous others—resulted in any formal discipline or punishment of any student. The responsibility for this failure to discipline the students falls primarily on the University's Dean of Student Affairs and 1998 City University alum, Mason Thatcher.

Thatcher is, of course, best known for his legendary college and NFL football careers. Thatcher was defensive team captain for the Scorpions and tallied 21 sacks in his final season. He was also a consensus All-American Player of the Year in 1998 and was voted the team's MVP. His number, 99, has been retired by the University. At the 1998 NFL Combine, Thatcher was the top performer in all but two combine categories. After a stellar college career from 1994 to 1998, Thatcher was selected as the third overall draft pick in the 1998 NFL draft. Thatcher went on to play for the Arizona Cardinals for seven years.

After his career in the NFL was tragically cut short by injury, Thatcher was hired by the University as a Dean, despite the absence of any academic background or traditional qualifications for the role. Thatcher appears to have been quite successful in this role, at least in many respects. He regularly attends and speaks at fundraising events for the University. Donations have risen considerably, and alumni organizations have been quite pleased. Dean Thatcher's tailgate parties have become

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keg while drinking from the tap). The student remains hospitalized with head injuries and multiple contusions, according to a hospital spokesperson." *Student Hospitalized After Graduation Drinking Stunt Goes Wrong*, The Stinger (May 8, 2021).

some of the University's most popular alumni engagement events.

But unfortunately, Thatcher has shown little interest in or talent for the part of his job relevant to this appeal: student discipline. As Thatcher testified in this case, he takes a "boys will be boys" approach to his position. In his view, students at the University are "good kids" who just "need a good talking to, not any kind of 'punishment.'" Even if "things may get out of hand every now and then," the students "work hard" and "just need to blow off a little steam." Campus security—and other employees within the Department of Student Affairs—have followed Dean Thatcher's hands-off approach to discipline and generally left the students to their own devices.

This case arises out of an incident that occurred on February 8, 2020. Among their other rowdy activities, students at the University have adopted the habit of shouting down speakers invited to present on campus, effectively a "heckler's veto" that leaves them unable to speak. Speakers who have been shouted down include speakers on institutional racism invited by the Lantana Black Student Coalition, speakers discussing Second Amendment rights invited by Lantana Students for Armed Self-Defense, speakers discussing whether recreational marijuana should be legalized in New Tejas invited by the High Five Society, and speakers addressing the current and ongoing effect of climate change invited by campus representatives of Carbon180. At each of these incidents, campus security failed to intervene, adhering to Thatcher's hands-off policies. Following these incidents, no students involved were disciplined in any way.

This suit involves Dove McMillan, a well-known vegan advocate, who was invited to speak on campus in the Hedge Family Auditorium by the Campus Vegan Alliance. The day before her speech, McMillan flew into Lantana and attended a private dinner hosted by a member of the Campus Vegan Alliance. She then spent the night at a local hotel.

McMillan testified at trial that the basic premise of her planned speech centered around encouraging people to abstain from consuming animal products, which (according to McMillan) is the only logical conclusion for a humane, feeling person to reach after knowing the state of the animal agriculture industry in the United States and abroad. McMillan intended to talk about how the human species has been exploiting and murdering animals at unprecedented levels in the name of consumerism, and that such depraved activities need to stop to save humanity and the world.

Approximately five minutes into her speech, a large group of yelling University student protestors gathered at the foot of the auditorium stage. Several of the protestors carried banners and various noisemakers; some also wore animal masks and costumes. The protestors made so much noise that they drowned out all of McMillan's attempts to talk. McMillan's pleas to the protestors to be quiet or to leave were ignored. Students present for McMillan's speech also repeatedly asked the protestors to stop, but to no avail. After about 15 minutes, McMillan left the stage and did not return.

The student protestors stayed in the auditorium for approximately one hour before they voluntarily dispersed. While in the auditorium, the protestors ended up breaking several tables and chairs, damaging the auditorium podium, and staining the carpet in front of

the stage. A member of campus security was present when McMillan started her speech, but the security officer did not engage with the protestors. Although the protestors—students at the University—were readily identified, the University did not discipline any of the student protestors for their actions.

McMillan subsequently sued the Board of Regents of City University of Lantana for violating her First Amendment rights under 42 U.S.C. § 1983. The case proceeded to trial. During trial, the University moved for judgment as a matter of law under Rule 50(a). The district court denied that motion. The jury ultimately awarded McMillan $12,487 in compensatory damages and $350,000 in punitive damages. On January 20, 2022, the district court initially entered a final judgment awarding only compensatory damages. Seven days later, the district court *sua sponte* modified the judgment to include the punitive damages awarded by the jury.

On February 24, 2022—twenty-eight days from the date of the modified judgment but thirty-five days from the date of the original judgment—the University filed a renewed motion for judgment as a matter of law under Rule 50(b). The district court ruled the University's Rule 50(b) motion was untimely and denied it without regard to its merits.

Discussion

Before addressing the merits of the University's Rule 50(b) motion, we must first address its timeliness.

I. The University Preserved Its Arguments With a Timely Rule 50(b) Motion.

To preserve arguments seeking judgment as a matter of law, a party must "file a renewed motion for judgment

as a matter of law and may include an alternative or joint request for a new trial under Rule 59." Fed. R. Civ. P. 50(b). Such a motion must be filed "[n]o later than 28 days after the entry of judgment." *Id.*

The deadlines for these motions are strict. Unlike other deadlines, which a district court may extend "for good cause," a court "must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b)." Fed. R. Civ. P. 6(b)(2).

Here, we must decide whether these deadlines are measured from the original final judgment (January 20) or the amended judgment (January 27).

The application of Rule 50(b) to some kinds of amended judgments is clear: if the amended judgment concerned only "collateral issues," such as costs, or merely corrected a clerical error, then the deadline would run from the original judgment. *See Progressive Indus., Inc. v. United States*, 888 F.3d 1248, 1253 (Fed. Cir. 2018) ("The Amended Judgment altered only the collateral issue of costs and therefore did not restart the time period for filing a Rule 59(e) motion in this case.").

But in this case, the parties agree that the change did not involve a collateral issue or a clerical error. The amended judgment awards punitive damages—which were not part of the original final judgment—and thus revised the parties' legal rights and obligations.

In finding the University's motion untimely, the district court followed decisions from the Second and Seventh Circuit holding that because the alteration did not affect liability—which were the sole grounds raised in the University's motion for judgment as a matter of law—the deadline to file the motion ran from the original final judgment, not the amended judgment. *See McNabola v.*

Chicago Transit Auth., 10 F.3d 501, 521 (7th Cir. 1993); *Tru-Art Sign Co., Inc. v. Local 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 221 (2d Cir. 2017).

We think the better reasoned rule is that adopted in the Fifth Circuit, which holds that when a superseding judgment "mak[es] a change of substance which disturb[s] or revise[s] legal rights and obligation," the second judgment begins the running of the limitations period for post-judgment motions. *Cornist v. Richland Par. Sch. Bd.*, 479 F.2d 37, 38–39 (5th Cir. 1973); *see also Wilmington Sav. Fund Soc'y, FSB v. Myers*, 95 F.4th 981, 982 (5th Cir. 2024) ("'[A]n order making such substantive changes is construed as a new judgment from which the 30-day appeal clock runs, and a party can suspend the time for filing a notice of appeal with another motion under Rule 59(e).").

The Fifth Circuit's rule derives from *FTC v. Minneapolis-Honeywell Regulator Co.*, in which the Supreme Court discussed the timing of petitions for writs of certiorari. 344 U.S. 206, 211–12 (1952). That decision indicates that "when the lower court changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered," then "the period within which an appeal must be taken or a petition for certiorari filed begin[s] to run anew." *Id.* at 212. "The test is a practical one. The question is whether the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality." *Id.*

This rule applies equally here. The lower court, by amending the judgment to include an award of punitive damages that was not contained in the original judgment, changed matters of substance and disturbed legal rights and obligations which had been plainly and properly

settled. As in *Cornist*, the original judgment "omitted a paragraph of substance." 479 F.2d at 39. As a result, the time for the University to file its post-judgment Rule 50(b) motion—just like the time for filing a notice of appeal—ran from the amended judgment.[3]

For these reasons, we conclude that the University preserved its arguments in a timely Rule 50(b) motion and that the district court erred in denying judgment as a matter of law on this basis.

II. McMillan Has No Constitutional Right to Law Enforcement Protection.

We now turn to the merits of the University's arguments. Judgment as a matter of law is warranted when "a reasonable jury would not have a legally sufficient evidentiary basis to find for [a] party on [an] issue." Fed. R. Civ. P. 50(a)(1).

In reviewing the denial of a motion for judgment as a matter of law, we must "conside[r] the evidence in the light most favorable to the non-moving party and dra[w] all reasonable evidentiary inferences in that party's favor." *Nimely v. City of New York*, 414 F.3d 381, 390 (2d Cir. 2005).

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[3] This appeal involves a *sua sponte* alteration to a judgment that occurred before the filing of any post-judgment motions. We express no opinion on how this rule would apply if a district court modified a judgment in response to a post-judgment motion, and a party filed a subsequent post-judgment motion raising arguments that could have been—but were not—raised in the original motion.

McMillan's claims arise under 42 U.S.C. § 1983. Section 1983 imposes liability on every person who, acting under color of state law, subjects another "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983.

Municipalities—like the University[4]—"can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658, 690 (1978). For purposes of Section-1983 liability, the defendant need not *formally approve* such a policy: "[L]ocal governments . . . may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval." *Id.*

There is no question that a reasonable jury had a legally sufficient evidentiary basis to find that the University had a policy (or at the very least, a custom) of refusing to prevent students from disrupting speakers and deciding not to discipline students for having done so.

However, McMillan did not demonstrate—or even allege—that this policy was applied in a viewpoint-discriminatory manner. The evidence presented at trial demonstrated conclusively that the University applied its policy of deliberate inaction consistently and evenhandedly.

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[4] The parties do not dispute that the University, which is chartered by the city of Lantana, constitutes a municipality for purposes of *Monell* liability.

Nor is there evidence that the University adopted this policy out of hostility to particular viewpoints. To the contrary, Dean Thatcher testified, without contradiction, that he personally agreed with many of the sentiments expressed by McMillan. Indeed, Thatcher's wife is a vegan. There is no evidence of impermissible motive. No reasonable jury could find that the University's policy arose out of anything other than intentional apathy and indolence.

Because the facts are largely undisputed, the only question is whether this policy violates the First Amendment, as incorporated against the States through the Fourteenth Amendment.

McMillan argues that the students' interference prevented her speech and thus she could not exercise her constitutional rights. A reasonable jury could make this finding.

But McMillan errs in her analysis of those constitutional rights. She focuses her discussion on cases discussing the nature of rights that protect against affirmative government interference. Those are not the facts here. Her rights against governmental interference do not guarantee any right to *require* that the government subsidize or support their exercise.

The Supreme Court rejected such a position in *Harris v. McRae*, where it discussed an argument that the government must subsidize abortions:

> It cannot be that because government may not prohibit the use of contraceptives, or prevent parents from sending their child to a private school, government, therefore, has an affirmative constitutional obligation to ensure that all persons have the financial resources to obtain contraceptives

> or send their children to private schools. To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result.

448 U.S. 297, 318 (1980) (internal citations omitted). We would add that the Second Amendment right to possess firearms merely prevents the government from interfering; it does not require that the government affirmatively ensure that individuals have the means and opportunity to acquire firearms.

The Supreme Court provided a similar analysis in rejecting a right to the protection of law enforcement under the Due Process Clause:

> [N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.

DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 195 (1989).

This analysis applies directly to the First Amendment claim at issue in this case. The limit on government power in the First Amendment does not constitute an "affirmative obligation" on the government to ensure exercise of these rights. The right to free speech acts "as a limitation on the [government's] power to act, not as a guarantee of certain minimal levels of safety and security." This analysis controls.

As McMillan acknowledges, her speech was curtailed because of the actions of private individuals, not because of the actions of the University. The University's failure to prevent private individuals from interfering with her speech did not—and could not have—violated the First Amendment.

Conclusion

For these reasons, we conclude that no cause of action exists and that the University is entitled to judgment as a matter of law.

REVERSED.

CARSON, Circuit Judge, concurring.

I fully concur in Judge Sinclair's opinion, which reaches the result compelled by the Supreme Court's holding that the Constitution does not entitle any person to police protection to protect the exercise of their rights.

I write separately, however, to urge the Supreme Court to reconsider this holding. The essence of government is that the state possesses a monopoly on violence. The University—and the State of New Tejas—would surely not have allowed (much less desired) McMillan to use force in defense of her own rights.

State law, for example, prohibited her from bringing a concealed firearm to campus and employing it to protect her right to speak.[5] And students who wished to hear her speech could not have lawfully used force to silence the protestors.

This, to me, distinguishes the situation from a mere failure to subsidize the exercise of rights. McMillan cannot speak unless the protestors are silenced. The State cannot simultaneously deprive her of the right to silence them herself (through its criminal laws) while refusing to enforce its own rules that would protect that speech.

The Supreme Court should overrule *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989). The rights to life, liberty, and property guaranteed by the Fourteenth Amendment—like the

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[5] *See* New Tejas Penal Code § 9.31(b)(1) (providing that the use of deadly force is not justified "in response to verbal provocation alone"). The New Tejas Penal Code is identical to the Texas Penal Code.

rights to speech, association, and religion guaranteed by the First Amendment—should carry with them certain minimal levels of safety and security.

ARROFORD, Circuit Judge, dissenting.

It is true, of course, that there is no general right to police protection. I respect and follow the Supreme Court's holding on this point. But the majority errs by extending this holding to mean that there is no right to the protection of law enforcement whatsoever.

I agree that McMillan presented no evidence of selective enforcement or viewpoint discrimination and accept the characterization of the University's policy as a "neutral" and equally applied rule of laxity.

But the effect of this policy is to leave speech protection to the whim of the mob: popular speech is permitted and welcomed on campus, and unpopular speech is shouted down and unheard. The First Amendment does not permit this outcome. I would hold that the right to free speech requires an accompanying right to government protection against those who would interfere with speech.

A core tenet of First Amendment law is that the government may not disfavor small or unpopular speakers. Majority rule and popularity contests are inconsistent with principles of free speech.

In *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988), the Supreme Court reviewed a North Carolina law regulating "solicitation of charitable contributions by professional fundraisers." *Id.* at 784. Although the law applied to all charities, it "necessarily discriminate[d] against small or unpopular charities," which were more likely to rely on professional fundraisers. *Id.* at 799; see also *id.* at 793 (noting that "small or unpopular charities . . . must often pay more than 35% of the gross receipts collected to the fundraiser due to the difficulty of attracting donors"); *id.* at 794

(explaining that law might encourage professional fundraisers "to cease engaging in . . . representing certain charities (primarily small or unpopular ones)"). The facially neutral law violated the First Amendment because it disfavored small or unpopular charities.

The Second Circuit reached the same result in a case involving student activity fees in *Amidon v. Student Association of State University of New York at Albany*, which involved an advisory student referendum used to determine how to allocate funds from a mandatory student activity fee among organizations. 508 F.3d 94, 95 (2d Cir. 2007). "It is apparent that any contrary or minority view is at a disadvantage because the referendum simply asks the student body whether an [organization] is entitled to a certain amount of funding." *Id.* at 101. The Second Circuit readily rejected popularity as a legitimate basis for access to a funding mechanism: "Favoritism of majority views is not an acceptable principle for allocating resources[.]" *Id.* at 102.

As the Supreme Court has emphasized, "[t]he whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views." *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 235 (2000). "Access to a public forum, for instance, does not depend upon majoritarian consent." *Id.*

No less than the referendum at issue in *Amidon*, the University's policy of inaction makes the right to speak dependent on the approval of the majority. By adopting a policy that students will not be prevented from (or punished for) interfering with the protected speech of others, the University has favored majority views over minority views, a constitutionally intolerable outcome.

I do not suggest that this right necessarily requires effective protection or would be violated any time that students interfere with campus speech, but if such a right exists at all, it is violated here, where the University has admittedly failed entirely either to restrain or to punish these students.

Respectfully, I dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW TEJAS

Civil Action No. 21-cv-1285

DOVE MCMILLAN,
Plaintiff.

v.

BOARD OF REGENTS OF
CITY UNIVERSITY OF LANTANA,
Defendant.

Filed: March 29, 2022

OPINION AND ORDER

SARAH ANDREWS, Judge.

This matter is before the Court on Defendant Board of Regents of City University of Lantana 's Renewed Motion for Summary Judgment as a Matter of Law Pursuant to Rule 50(b). For the reasons detailed below, the Court denies the motion without reaching the merits.

Background

This matter was tried before a jury between January 17 and 20. The jury returned a verdict in favor of Plaintiff on January 20, awarding $12,487 in compensatory damages and $350,000 in punitive damages.

That day, this Court entered a final judgment on the verdict (the "Final Judgment"). The Final Judgment awarded compensatory damages and stated that "all relief not granted herein is DENIED."

One week later, on January 27, 2022, this Court *sua sponte* entered the Amended Final Judgment (the "Amended Final Judgment"), which included the punitive damages awarded by the jury.

Exactly twenty-eight days after entry of the Amended Final Judgment, on February 24, the University filed its Renewed Motion for Judgment as a Matter of Law Under Rule 50(b), renewing the arguments challenging its liability that it raised at trial under Rule 50(a).[1]

Plaintiff opposes the motion, both on the merits and on procedural grounds, arguing that the University's motion is untimely.

Analysis

Regretfully, I am compelled to agree with Plaintiff that the University's motion is untimely and thus that I need not address its merits.

The deadlines for post-judgment motions are strict and unforgiving: "No later than 28 days after the entry of judgment . . . the movant may file a renewed motion for judgment as a matter of law[.]" Fed. R. Civ. P. 50(b); *see also* Fed. R. Civ. P. 52(b); Fed. R. Civ. P. 59. Unlike other deadlines set by the Rules, this Court has no power to extend the time for a party to file a post-judgment motion:

> (1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

[1] It is undisputed that the arguments raised by the University in the motion pending before this Court were properly preserved in its Rule 50(a) motion at trial.

> (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
> (B) on motion made after the time has expired if the party failed to act because of excusable neglect.
>
> (2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

Fed. R. Civ. P. 6(b).

As a result, I must determine the timeliness of the University's motion, without regard to whether good cause exists for extending the time and without regard to whether the University failed to act earlier because of excusable neglect.

The University argues, not without some force, that its motion complied with these rules because it was filed 28 days after the entry of the Amended Final Judgment. It well-established that when a court makes only a clerical modification to a judgment or alters only a collateral issue, the time to appeal or file post-judgment motions is not restarted. *See Progressive Indus., Inc. v. United States*, 888 F.3d 1248, 1253 (Fed. Cir. 2018) ("The Amended Judgment altered only the collateral issue of costs and therefore did not restart the time period for filing a Rule 59(e) motion in this case."); *FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211–12 (1952) ("[T]he mere fact that a judgment previously entered has been reentered or revised in an immaterial way does not toll the time within which review must be sought."). From these principles, the University reasons

that any non-clerical or material modification of a judgment must necessarily restart the deadlines.[2]

But as Plaintiff persuasively explains, this is not the route that the courts of appeals have followed. Given the absence of authority from the Thirteenth Circuit Court of Appeals, I follow the explanation given by the Seventh Circuit, which recognizes a more limited effect of amendments to a judgment: "[W]hen a court alters its judgment, a person aggrieved by the alteration may ask for correction." *McNabola v. Chicago Transit Auth.*, 10 F.3d 501, 521 (7th Cir. 1993); *see also Branion v. Gramly*, 855 F.2d 1256, 1259 (7th Cir. 1988) ("[I]f a judge alters her judgment in response to the first motion, the party aggrieved by the change may file a motion directed to the difference."). Under these principles, there is no question that the University could have filed timely post-judgments motions challenging the award of punitive damages in the Amended Final Judgment.

But the arguments raised in the University's post-judgment motion do not concern this Court's alterations. The University instead challenges liability, an issue fully resolved and decided in the original Final Judgment and unaffected by the Amended Final Judgment. Because the motion "'bear[s] [no] relationship" to the basis for altering the original judgment, *Tru-Art Sign Co., Inc. v. Local 137 Sheet Metal Workers Int'l Ass'n*, 852 F.3d 217, 221 (2d Cir. 2017) (quoting *McNabola*, 10 F.3d at 521), the deadline to raise these arguments ran from the Final Judgment, not

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[2] The parties do not dispute that the judgment entered on January 20, 2022, constituted a final judgment. Nor is it disputed that the addition of punitive damages to the Amended Final Judgment constituted a material, non-clerical modification.

from the Amended Final Judgment. *See also id.* ("When both an initial judgment and an amended judgment exist, the timeliness of a Rule 59(e) motion is determined from the date of the amended judgment only if the motion bears some relationship to the district court's alteration of the first judgment."). Because the University filed its motion 35 days after entry of the Final Judgment, it is untimely.

I recognize the seeming unfairness of this result, but such a result is contemplated by the rules. Rule 6 requires that I enforce the 28-day deadline to file a motion under Rule 50(b), even when a party's failure to satisfy that deadline was, like the University's failure might have been here, the result of excusable neglect.

For these reasons, I conclude that the University's motion is untimely and that I need not address its merits. In the alternative, I would deny the motion for the reasons stated in my denial of the Rule 50(a) motion.

Conclusion

For the foregoing reasons, Defendant's Renewed Motion for Judgment as a Matter of Law is DENIED.

DATED this 29th day of March, 2022.

BY THE COURT:

/s/ Sarah Andrews
Sarah Andrews
United States District Judge

APPENDIX C

The First Amendment to the Constitution of the United States of America provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 1983 of Title 42 of the United States Code provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.