

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PETER BORMUTH,

Plaintiff,

v.

COUNTY OF JACKSON,

Defendant.

CASE NO. 2:13-cv-13726

HON. MARIANNE O. BATTANI

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**ORDER OVERRULING IN PART AND  
ADOPTING IN PART THE MAGISTRATE JUDGE'S ORDER**

Before the Court is Plaintiff's Objection to the Magistrate Judge's April 17, 2015, Order (Doc. 54) denying Plaintiff's motions to supplement. (Doc. 56.) Plaintiff sought to supplement the record with the text of an additional prayer offered by the Commissioners at a meeting, along with Plaintiff's affidavit describing the Pledge of Allegiance at a meeting and his application to the Jackson County Resource Recovery Facility. (See Docs. 42, 52.) For the reasons that follow, the Court **OVERRULES IN PART AND ADOPTS IN PART** the Magistrate Judge's order.

Additionally before the Court is Plaintiff's Third Motion to Supplement. (Doc. 57.) Through this motion, Plaintiff seeks to introduce his affidavit describing a Commissioner's behavior during a Board meeting. For the reasons that follow, the Court **GRANTS** Plaintiff's Third Motion to Supplement.

## I. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(A) the Court may reconsider a pretrial order where the objecting party shows it is “clearly erroneous or contrary to law.” A finding is clearly erroneous when a review of the entire evidence leaves the reviewing court “with the definite and firm conviction that a mistake has been committed.” Brooks v. Tennessee, 626 F.3d 878 (6th Cir. 2010) (citing Anderson v. City of Bessemer City, 470 U.S. 564, 573 (1985) (quoting United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948))).

Fed. R. Civ. P. 15(d) provides that, “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” The Sixth Circuit has instructed that this rule be given a “liberal construction” so as “to permit amendments freely.” McHenry v. Ford Motor Co., 269 F.2d 18, 24-25 (6th Cir. 1959).

## II. ANALYSIS

The Magistrate Judge denied Plaintiff’s motions to supplement because it had recommended relief in his favor in the Report and Recommendation on the parties’ cross motions for summary judgment. However, the Court finds that some of this information should be included in the record, especially in light of the Court’s *de novo* review of the Report and Recommendation. In one of his motions to supplement, Plaintiff sought to introduce his affidavit describing a prayer invocation delivered at a Jackson County Board Meeting. (Doc. 42.) Because the content of the prayer

invocation is central to the outcome of the case, the Court **GRANTS** this motion to supplement.

In another motion to supplement, Plaintiff seeks to introduce his affidavit regarding his application to a position on the Jackson County Resource Recovery Facility and the Board's failure to hire him for this position. (Doc. 52.) Plaintiff's affidavit also briefly mentions the Board's solicitation of children to recite the Pledge of Allegiance. Because Plaintiff's complaint makes no employment discrimination claim, instead advancing as the sole cause of action an *Establishment Clause* violation, his affidavit describing the Board's failure to hire him is irrelevant to the case at hand. Although Plaintiff also attests to the solicitation of children to deliver the Pledge of Allegiance, his description of and objections to this practice are adequately set forth elsewhere in the record. Therefore, it is within the broad discretion accorded to the Court by Rule 15(d) to **DENY** this motion to supplement.

Lastly, in Plaintiff's Third Motion to Supplement, he seeks to admit his affidavit describing Commissioner John Polaczyk's rude behavior in swiveling his chair and turning his back to Plaintiff as Plaintiff addressed the Board on the matter of abortion. (Doc. 57.) Because the Commissioners' conduct during the Board meetings is pertinent to the matter of coercion, the Court **GRANTS** Plaintiff's motion to supplement.

### III. CONCLUSION

Consistent with the foregoing analysis, the Court **OVERRULES IN PART AND ADOPTS IN PART** the Magistrate Judge's order and **GRANTS** Plaintiff's motion to supplement.

**IT IS SO ORDERED.**

Date: July 22, 2015

s/Marianne O. Battani  
MARIANNE O. BATTANI  
United States District Judge

#### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on July 22, 2015.

s/ Kay Doaks  
Case Manager