

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 23, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CAROLYN CROUTHAMEL,
DIANE MCCALLISTER, and
JOANNE BAKER, on behalf of
themselves and all others similarly
situated, as individuals,

Plaintiffs,

v.

WALLA WALLA PUBLIC
SCHOOLS, a Washington public
school district; EVERGREEN
PUBLIC SCHOOL DISTRICT, a
Washington public school district;
KENT PUBLIC SCHOOL
DISTRICT, a Washington public
school district; and PUBLIC
SCHOOL EMPLOYEES, SERVICE
EMPLOYEES INTERNATIONAL
UNION LOCAL 1948, a labor
corporation,

Defendants.

NO: 4:20:-CV-5076-RMP

ORDER DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION

BEFORE THE COURT is a Motion for Reconsideration by Plaintiffs

Carolyn Crouthamel, et al., ECF No. 44. Defendants Walla Walla Public Schools,

1 et al. filed a response in opposition to reconsideration. ECF No. 45. Plaintiffs did
2 not file a reply. *See* LCivR 7(e) (providing that the Court may interpret a failure to
3 adhere to the local rules governing motion practice as consent to entry of an
4 adverse order).

5 **BACKGROUND**

6 The Court presumes familiarity with the background and procedural history
7 of this case, as recited in the summary judgment order (“April 22, 2021 Order”).
8 *See* ECF No. 42. The April 22, 2021 Order directed entry of judgment for
9 Defendants on all of Plaintiffs’ federal claims, finding in relevant part that
10 Plaintiffs’ two claims alleging violation of the First Amendment through 42 U.S.C.
11 § 1983 were precluded by controlling law of this Circuit, as set forth in *Belgau v.*
12 *Inslee*, 975 F.3d 940 (9th Cir. 2020), *reh’g en banc denied*, 2020 U.S. App. LEXIS
13 (Oct. 26, 2020), *cert. denied*, 2021 U.S. LEXIS 3373 (June 21, 2021). *See* ECF
14 Nos. 42 (April 22, 2021 Order); 43 (Judgment).

15 Plaintiffs filed the instant Motion for Reconsideration on April 26, 2021,
16 alleging that the Court erroneously “disposed of all Plaintiffs’ First Amendment
17 claims based on the incorrect premise that Plaintiffs conceded that the Ninth
18 Circuit’s *Belgau* decision controls all its First Amendment claims.” ECF No. 44 at
19 3. Plaintiffs argue that while they agree that *Belgau* forecloses their claim that
20 Defendants violated the First Amendment by deducting union payments from
21 Plaintiffs’ wages without first acquiring a First Amendment waiver, Plaintiffs

1 offered two alternative arguments. *Id.* at 3–4. Plaintiffs argue that they made a
2 “procedural-related” First Amendment claim that the Ninth Circuit had not
3 addressed in *Belgau*, and also argued that the membership agreements that provide
4 for dues deductions were “void *ab initio* for lack of consideration.” *Id.*

5 Defendants filed their response to Plaintiffs’ Motion on May 7, 2021,
6 arguing that Plaintiffs’ basis for seeking reconsideration “is both factually
7 inaccurate and legally irrelevant.” ECF No. 45 at 4. Defendants assert that the
8 Court did not state that Plaintiffs made any concession specific to their
9 “procedural” First Amendment claim. *See* ECF No. 45 at 4 (quotation marks used
10 by Defendants). Defendants further assert that, as a legal matter, the Court
11 appropriately recognized that “Plaintiffs’ First Amendment claims are foreclosed
12 by [the holding of *Belgau*], however Plaintiffs purport to describe those claims.”
13 *Id.* at 5–6 (citing *Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001) (“If a
14 court must decide an issue governed by a prior opinion that constitutes binding
15 authority, the later court is bound to reach the same result.”)).

16 Plaintiffs filed a Notice of Appeal on May 19, 2021. ECF No. 47.

17 **LEGAL STANDARD**

18 Ordinarily, the filing of a notice of appeal divests a district court of
19 jurisdiction. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)
20 (per curiam). However, a motion for reconsideration pursuant to Fed. R. Civ. P. 59
21

1 postpones the effect of a notice of appeal until the motion for reconsideration is
2 resolved. Fed. R. App. 4(a)(4).

3 Courts in this Circuit disfavor motions for reconsideration and deny them
4 “absent highly unusual circumstances, unless the district court is presented with
5 newly discovered evidence, committed clear error, or if there is an intervening
6 change in controlling law.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir.
7 1999) (per curiam); *see also* Fed. R. Civ. P. 59(e). “A motion for reconsideration
8 ‘may not be used to raise arguments or present evidence for the first time when
9 they could reasonably have been raised earlier in the litigation.’” *Marlyn*
10 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.
11 2009) (quoting *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.
12 2000) (emphasis in original)).

13 DISCUSSION

14 Plaintiffs seek reconsideration on the basis that the Court erred by
15 dismissing their First Amendment claims, as Plaintiffs allege, “on the incorrect
16 premise” that Plaintiffs conceded that the *Belgau* decision controls all of their First
17 Amendment claims. ECF No. 44. However, the Court’s description of what the
18 Plaintiffs conceded was narrow and consistent with what Plaintiffs continue to
19 acknowledge:

20 Plaintiffs acknowledge that the decision by the United States Court of
21 Appeals for the Ninth Circuit in *Belgau*[] is controlling with respect to
their contention in the Complaint that a government violates the First

1 Amendment by deducting union payments from “the wages of public
2 employees who have not waived their First Amendment right to not
fund union advocacy.”

3 See ECF No. 42 at 14–15 (citing ECF Nos. 1 at 2; 37 at 23); *see also* ECF No. 44
4 at 3.

5 Furthermore, it is immaterial whether Plaintiffs conceded any other theory of
6 their First Amendment claims because *Belgau* held that nearly identically situated
7 plaintiffs suffered no violation of their First Amendment rights. *See Belgau*, 975
8 F.3d at 950–51. *Belgau* left no opening through which any other theory of
9 Plaintiffs’ First Amendment claims could fit, and the Court dismissed Plaintiffs’
10 First Amendment claims “pursuant to the controlling law of this Circuit,” not
11 pursuant to Plaintiffs’ acknowledgement of that law. *See* ECF No. 42 at 15.
12 Finally, Plaintiffs’ argument that the membership agreements were void for lack of
13 consideration is based in contract, not on the First Amendment.

14 In short, the Court did not find a concession as the Plaintiffs allege, and,
15 more critically, the Court did not rely on Plaintiffs’ concession to conclude that
16 Plaintiffs’ First Amendment claims are foreclosed by controlling Ninth Circuit
17 authority. Accordingly, reconsideration is not warranted based on clear error.

18 Accordingly, **IT IS HEREBY ORDERED:**

- 19 1. Plaintiffs’ Motion for Reconsideration, **ECF No. 44**, is **DENIED**.
- 20 2. The file in this case shall remain closed.

