

Conservative's Suit Over Denial of Tenure Allowed to Proceed

BY JOEL STASHENKO

A FORMER college instructor may proceed with a claim that he was denied tenure because school administrators disapproved of his conservative politics and support for President George W. Bush, not for deficiencies as an educator, a federal judge has ruled.

Michael Filozof has presented sufficient evidence of a possible First Amendment violation to deny Monroe Community College's motion for summary judgment on his free speech claim, Western District Court Judge David G. Larimer has determined.

Mr. Filozof contends the tenure track he was on as a political science instructor at the Rochester community college was suddenly derailed in 2003, during a period of hot debate among students and faculty over the ramp-up to the war in Iraq. His complaint characterized faculty and administrators as liberals who are intolerant of right-of-center viewpoints.

He argues in *Filozof v. Monroe Community College*, 04-cv-6545L, that a sex-harassment charge was trumped up against him after he the-

atrically kissed the hand of a school secretary and that administrators began to question his "open-mindedness" because of the confidence he expressed in the correctness of his conservative views.

Judge Larimer ruled Tuesday that whether Mr. Filozof can ultimately prove college officials engaged in the discriminatory fashion he alleges "are questions of fact which cannot, and should not, be resolved by this Court."

"In order to meet his initial burden on his First Amendment claim, Filozof need not show that his political speech was the only factor in MCC's determination, but must show that it

was a 'substantial' or 'motivating' factor," the judge wrote from Rochester. "Construing the evidence in Filozof's favor, as I must on this motion, I find that Filozof has met this burden, and that MCC has failed to prove that it would have discontinued Filozof's employment even in the absence of such speech."

Mr. Filozof was initially brought on at the community college as an adjunct political science teacher in the spring 2002 semester and subsequently hired for the 2002-03 academic year for what was to be the first of five, one-year contracts that

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would culminate in his being granted tenure in 2007.

In March 2003, however, Mr. Filozof was observed taking transparencies he had requested from a college secretary and, "in a Shakespearian manner," bowing and kissing the woman's hand in thanks. As he left, he said to a male professor words to the effect that, "See Dave, that's the way you have to treat them."

The secretary, Diana Rayner, related the incident to Susan Belair, the chairwoman of the political science department. Ms. Belair, in turn, told the college's sexual harassment officer, Susan Baker. In a deposition, Ms. Rayner said she did not consider the hand kiss to be sexual harassment but that she was pressured by Ms. Belair or Ms. Baker, or both, to file a formal complaint.

Mr. Filozof balked at meeting with Ms. Baker to discuss the incident that led to the complaint. He was later ordered to apologize to Ms. Rayner, Ms. Day, Ms. Baker and Ms. Belair and to hold a series of meetings with Ms. Belair to discuss his "acculturation" at the college.

That fall, members of Mr. Filozof's department recommended that his contract be renewed for a second year, calling him an "exceedingly gifted teacher" and including unsolicited letters from students praising his work.

Ms. Belair, however, recommended against rehiring Mr. Filozof, citing his interpersonal "difficulties" and his alleged reluctance to participate in col-

lege activities beyond the classroom.

The liberal arts dean at the college, Chet Rogalski, also recommended against renewal, as did Vice President Janet J. Glocker. The trustees at the college ultimately voted against rehiring Mr. Filozof.

Mr. Rogalski said he was against renewal in part based on Mr. Filozof's alleged failure to be "open-minded" with respect to his political conservatism.

At a deposition, Mr. Rogalski said he was "disappointed when I suggest to Michael that his philosophy was conservative and he remarked that it was not—it was factual and correct. ... Michael has evidenced through his attitude and relationships that he will always consider himself right and others wrong. One of the hallmarks of a successful college professor is that they have an open mind to differing opinions and people."

Political Views

The attorneys for Monroe County who defended the college and its administrators contend that it was not Mr. Filozof's political beliefs that Mr. Rogalski meant when he criticized the failure to be more "open-minded." Rather, Mr. Rogalski objected to Mr. Filozof's insistence that he might stifle the airing of opposing views in his classroom, the county argued.

Judge Larimer disagreed.

"It is clear from Rogalski's handwritten notes outlining the written recommendation that his conclusion

about Filozof's open-mindedness referred to Filozof's political views," the judge wrote.

In fact, materials submitted to administrators in support of renewal of Mr. Filozof's contract contained praise from students and other professors for allowing classroom discussions of viewpoints that conflicted with his conservative stances, Judge Larimer held.

The judge also wrote that the timing of the decision not to renew Mr. Filozof's contract is "suggestive of a potential causal relationship" between the decision and Mr. Filozof's expressions of support for Mr. Bush and the Iraq war.

"Politically charged" conversations were occurring at the college about the country's involvement in Iraq, Judge Larimer wrote, and Mr. Filozof had posted an American flag sticker on his office door with a pro-Bush slogan on it, leaving no doubt where he stood.

Judge Larimer dismissed Mr. Filozof's causes of action that he was discriminated against based on his gender and Caucasian race. He also dismissed Mr. Filozof's motion to declare unconstitutional two programs that offer teaching opportunities to minority instructors.

J. Nelson Thomas of Dolin, Thomas & Solomon in Rochester represented Mr. Filozof. Michael E. Davis and Howard A. Stark of the Monroe County Department of Law argued on behalf of the college, its trustees, several college administrators and Monroe County.

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