UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KAYLA PETERSON,
Plaintiff,

v. **Case No. 23-C-1543**

RACINE UNIFIED SCHOOL DISTRICT,
Defendant.

DECISION AND ORDER

Plaintiff Kayla Peterson brings this action for damages against her former employer, the Racine Unified School District. The district terminated plaintiff's employment because she refused to comply with or enforce the district's masking policy for preventing the spread of COVID-19. Plaintiff alleges that her termination was unlawful for three reasons. First, she alleges that her sincerely held religious beliefs precluded her from following or enforcing the masking policy, and that therefore the termination amounted to discrimination on the basis of religion, in violation of Title VII of the Civil Rights Act of 1964. Second, she alleges that requiring school-aged children to wear masks is against public policy, and that therefore the district's terminating her for refusing to enforce the masking policy amounted to wrongful discharge in violation of Wisconsin law. Finally, plaintiff alleges that her public comments on Facebook about the masking policy played a role in the district's decision to terminate her, and that therefore the termination violated her free-speech rights under the federal and Wisconsin constitutions.

Before me now is defendant's partial motion to dismiss plaintiff's amended complaint for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). The motion seeks dismissal of the amended complaint only to the extent that it asserts a wrongful-

discharge theory. The motion does not target plaintiff's allegations under Title VII or her free-speech claim.

I. BACKGROUND

Plaintiff is a resident of Florida. During the events giving rise to this suit, she lived in Mount Pleasant, Wisconsin. In September 2020, plaintiff began working for the Racine school district as an "extended day coordinator." (Am. Compl. ¶ 19.) Plaintiff does not describe the duties of her position, but it appears that, during periods of in-person instruction, she ran an after-school program at an elementary school. (*See* Am. Compl. Ex. O at 2.)

On February 16, 2021, the district adopted a policy requiring all students and staff to wear either a surgical mask or a cloth mask while on district property. (Am. Compl. ¶ 22 & Ex. E.) The policy included a provision for accommodating students with medical conditions that prevented them from wearing masks. (*Id.* ¶ 23.) Plaintiff was opposed to the masking policy and informed the district that she would not comply. (*Id.* ¶ 26.) Plaintiff's opposition was based on various factors, including her interpretation of Bible passages (*id.* ¶ 36) and her personal belief that masking is "hazardous to children" (*id.* ¶ 26). In May 2021, district and school officials warned plaintiff that her refusal to comply with the masking policy could result in her termination. When plaintiff continued her noncompliance, the district placed her on administrative leave.

In June 2021, plaintiff met with district officials about her objections to the masking policy. (Am. Compl. ¶ 30.) The minutes of this meeting reflect that plaintiff voiced three objections to the policy: that it violated FDA regulations governing the use of surgical masks, that wearing masks is unsafe, and that the district lacked authority to enforce its masking policy because the City of Racine's masking ordinance had expired. (Am. Compl. Ex. J.) In response to her first objection, the district informed her that the FDA regulations applied only

to medical settings, and that in any event district policy permitted use of a cloth mask instead of a surgical mask. (*Id.*) In response to her second objection, the district informed plaintiff that the scientific community supports masking to prevent the spread of COVID-19, and that the CDC has deemed masking safe. (*Id.*) The district also referred plaintiff to the CDC's website, which contained a discussion of scientific studies showing that masks "are not associated with decreased oxygen and increased carbon dioxide levels in the wearer." (*Id.*) Finally, in response to plaintiff's third objection, the district informed her that the expiration of the City of Racine's masking ordinance did not preclude the district from continuing to enforce its own masking policy. (*Id.*) After the meeting, the district summarized the discussion in a letter to plaintiff and advised her that, if she chose to return to work, she would be expected to comply with the masking policy. (Am. Compl. Ex. F.)

On August 11, 2021, the district offered to rehire plaintiff for the 2021–22 school year, and plaintiff accepted. In its letter extending the offer, the district did not mention the masking policy. However, later that month, plaintiff read an article in the newspaper stating that the district would be requiring masking at the beginning of the school year. On August 23, 2021, plaintiff sent a request for a religious exemption to her supervisor, in which she cited Bible passages that she interpreted as precluding her from wearing a mask. (Am. Compl. ¶¶ 35–36 & Ex. M.) Plaintiff received a response from the district's legal department stating that the district was not offering religious exemptions to the masking policy and that plaintiff would be required to wear a mask during her employment. (*Id.* ¶ 37 & Ex. N.)

After plaintiff returned to work, staff members complained to the district that plaintiff was not wearing a mask. (Am. Compl. ¶ 40.) In addition, the district received a complaint about plaintiff's comments on Facebook, in which plaintiff boasted about not wearing a mask while working at a district school and criticized the district's masking policy. (*Id.* ¶ 41 & Exs.

P–Q.) On October 25, 2021, a district official interviewed plaintiff about these complaints. (*Id.* ¶ 45.) According to a letter sent to plaintiff after the interview, plaintiff admitted during the interview that she did not wear a mask while working inside her school and did not enforce the masking requirement for students. (*Id.* Ex. R.) Because of plaintiff's continued refusal to either comply with or enforce the masking policy, the district terminated her employment. (*Id.* ¶¶ 46, 51.)

Following her termination, plaintiff moved to Hudson, Florida to secure new employment. After filing a charge of discrimination with the Equal Employment Opportunity Commission, plaintiff commenced this suit alleging religious discrimination in violation of Title VII, wrongful discharge in violation of Wisconsin law, and retaliatory termination in violation of the free-speech provisions of the federal and state constitutions. The district has answered the amended complaint to the extent that it alleges claims under Title VII and retaliation for engaging in expressive activities. However, it now moves to dismiss plaintiff's claim for wrongful discharge under Wisconsin law for failure to state a claim.

II. DISCUSSION

A. Subject-Matter Jurisdiction

Because the district's motion pertains to a claim under state law, I begin by confirming that I have subject-matter jurisdiction. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (federal courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party"). There are two possible bases for subject-matter jurisdiction over the state-law claim for wrongful discharge: diversity of citizenship under 28 U.S.C. § 1332 and supplemental jurisdiction under 28 U.S.C. § 1367. Plaintiff alleges that she now lives and works in Florida (Am. Compl. ¶ 10), which means that the parties were diverse at the time the suit was initiated. However, plaintiff has not alleged

that the amount in controversy exceeds $75,000, exclusive of interest and costs, which is a requirement for jurisdiction under § 1332. *See Sykes v. Cook Incorporated*, 72 F.4th 195, 205 (7th Cir. 2023).

Nonetheless, I conclude that plaintiff's state-law claim is within the court's supplemental jurisdiction. As is relevant here, the supplemental-jurisdiction statute provides that, when a court has original jurisdiction over a federal claim, it also has supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). To form part of the same case or controversy, the claims must generally "share a common nucleus of operative facts." *Prolite Bldg. Supply, LLC v. MW Mfrs., Inc.*, 891 F.3d 256, 258 (7th Cir. 2018).

Here, the court has original jurisdiction over plaintiff's Title VII claim and her First Amendment retaliation claim. Further, the state-law wrongful-discharge claim arises out of the same operative facts as the Title VII and First Amendment claims, namely, the events surrounding plaintiff's termination for refusing to comply with the district's masking policy. In fact, the wrongful-discharge claim is merely an alternative legal theory underlying plaintiff's single grievance against the district over the termination of her employment. Accordingly, this court has jurisdiction to entertain the wrongful-discharge claim.

B. Merits

To avoid dismissal under Rule 12(b)(6), a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint must, at a minimum, "give the defendant fair notice

of what the claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555. In evaluating a motion to dismiss under Rule 12(b)(6), I must "accept the well-pleaded facts in the complaint as true"; however, "legal conclusions and conclusory allegations merely reciting the elements of the claim are not entitled to this presumption of truth." *McCauley v. City of Chicago,* 671 F.3d 611, 616 (7th Cir. 2011).

Wisconsin follows the employment-at-will doctrine, under which an employer may discharge an employee from employment for an indefinite term "for good cause, for no cause, or even for cause morally wrong, without being thereby guilty of legal wrong." *Brockmeyer v. Dun & Bradstreet*, 113 Wis. 2d 561, 567 (1983) (internal quotation marks omitted). However, Wisconsin also recognizes a "narrow public policy exception" to the employment-at-will doctrine. *Id.* at 572. Under this exception, "an employee has a cause of action for wrongful discharge when the discharge is contrary to a fundamental and well-defined public policy as evidenced by existing law." *Id.* at 573. In this context, "existing law" means constitutional or statutory provisions and some administrative rules. *Strozinsky v. Sch. Dist. of Brown Deer*, 237 Wis. 2d 19, 42 (2000). Plaintiffs seeking relief under this narrow exception must: (1) first identify a fundamental and well-defined public policy in their complaint sufficient to trigger the exception to the employment-at-will doctrine; and (2) then demonstrate that the discharge violated that fundamental and well-defined public policy. *Id.* at 40.

In the present case, the district contends that plaintiff's complaint does not adequately plead either element. The district notes that there is no fundamental and well-defined public policy *against* mask mandates. To the contrary, especially during the first two years of the COVID-19 pandemic, many governmental agencies adopted mask mandates to protect the public from infection. Indeed, at the time of plaintiff's termination, a municipal ordinance of the City of Racine required all businesses and organizations within the city to enforce a mask

mandate. *See* Municipal Code of the City of Racine, Wisconsin § 54-35. Thus, argues the district, its decision to terminate plaintiff for refusing to comply with the masking policy *furthered* public policy rather than violated it.

In response to the district's motion, plaintiff does not attempt to show the existence of a fundamental and well-defined public policy against mask mandates. Instead, she contends that there is a fundamental and well-defined public policy against physically and mentally abusing children, and she asserts that requiring children to wear masks while in school is a form of child abuse. Here, she cites the Wisconsin Statutes criminalizing physical abuse of a child, Wis. Stat. § 948.03, and causing mental harm to a child, Wis. Stat. § 948.04.

I do not doubt that preventing the physical and mental abuse of children is a fundamental, well-defined public policy. But the mere existence of that policy is not enough to give plaintiff a claim for wrongful discharge. Plaintiff must also demonstrate that her termination was *contrary* to that policy. *See Bammert v. Don's Super Valu, Inc.*, 254 Wis. 2d 347, 357–58 (2002); *Strozinsky*, 237 Wis. 2d at 40. Of course, plaintiff cannot do this, as no court or other reputable legal authority has ever suggested that requiring mask wearing in an elementary school is a form of criminal child abuse. Indeed, because the mask mandate was in force in the district for portions of two school years and no district employee was arrested or prosecuted for child abuse, it is obvious that enforcing a mask mandate in an elementary school is not a well-established form of criminal child abuse.

Because no legal authority suggests that the district's policy was a form of child abuse, plaintiff argues that it is sufficient that she personally "believed" based on "research that she had done personally" that mask wearing is harmful to children. (Br. in Opp. at 3.) However, the public-policy exception to the employment-at-will doctrine does not prevent employers from terminating employees for acting on their personal beliefs about what public policy

should be. Instead, the purpose of the exception is to vindicate existing public policy, which is based on "the community common sense and common conscience." *Brockmeyer*, 113 Wis. 2d at 573.

The Wisconsin Supreme Court's decision in *Tatge v. Chambers & Owen, Inc.*, 219 Wis. 2d 99 (1998), underscores the point that public policy is not determined by the employee's personal beliefs about the legality of the employer's conduct. In that case, an employer terminated the plaintiff for refusing to sign a non-compete and non-disclosure agreement that the employee believed was unreasonable. The employee noted that a Wisconsin statute provided that unreasonable non-compete agreements are unenforceable, and he argued that this statute expressed "a fundamental and well-defined public policy that unreasonable restraints of trade will not be placed upon employees." *Id.* at 114. The Wisconsin Supreme Court agreed that the statute evidenced "a strong public policy" against placing unreasonable restraints on employees. *Id.* at 114–15. However, the court held that an employer's terminating an employee for refusing to sign a non-compete agreement that the "employee *considers* to be unreasonable" is not against public policy. *Id.* at 115 (emphasis in original). The court noted that extending the public-policy exception to such circumstances would permit at-will employees to "indiscriminately decline to sign non-disclosure/non-compete agreements which in their own minds are 'unreasonable,' and subsequently bring a wrongful discharge claim if terminated for doing so." *Id.* at 117–18 (footnote omitted). The court concluded that turning all restrictive-covenant cases into wrongful-discharge cases in this fashion was not the purpose of the public-policy exception. *See id.*

Like the plaintiff in *Tatge*, the plaintiff here attempts to exploit a recognized public policy by relying on her own beliefs about what violates that policy. She notes that child abuse is against public policy and claims that because, in her own mind, mask mandates are a form

of child abuse, the district's terminating her for refusing to enforce its mask mandate was against public policy. Allowing an employee's personal beliefs about public policy to provide grounds for wrongful termination would vastly expand the scope of the public-policy exception and contravene the Wisconsin Supreme Court's holding that the exception is a "narrow" one. *Brockmeyer*, 113 Wis. 2d at 572. Accordingly, I must reject plaintiff's attempt to so expand the exception.*

To be sure, plaintiff's beliefs about mask mandates and their effects on children might support her claims for religious discrimination and First Amendment retaliation, as freedom of religion and freedom of speech are individual liberties that protect personal beliefs and religious views. But because only "existing law" can establish public policy, *id.*, plaintiff's personal beliefs about what constitutes child abuse cannot support her claim for wrongful discharge. Accordingly, the district's motion to dismiss the wrongful-discharge claim will be granted.

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* Notably, in each case in which the Wisconsin Supreme Court found that a termination violated public policy, the court did not rely on the employee's personal belief that the employer's conduct violated public policy. Instead, the objective facts clearly demonstrated that the termination was contrary to an established public policy. *See Strozinsky*, 237 Wis. 2d at 30 (payroll clerk refused to act contrary to IRS advice that complying with employer's instructions would violate tax regulations); *Hausman v. St. Croix Care Ctr.*, 214 Wis. 2d 655, 667–68 (1997) (employee fired for reporting suspected nursing home neglect, as required by Wisconsin law); *Kempfer v. Auto. Finishing, Inc.*, 211 Wis. 2d 100, 106–07 (employee terminated for refusing to drive heavy truck without a CDL license after being warned by state patrol officer that doing so is illegal); *Winkelman v. Beloit Mem'l Hosp.*, 168 Wis. 2d 12, 24 (1992) (nurse terminated for refusing to violate administrative rule prohibiting her from working beyond her qualifications); *Wandry v. Bull's Eye Credit Union*, 129 Wis. 2d 37 (1986) (employee terminated for workplace error in violation of pubic policy of first allowing employee opportunity to show that she was not guilty of carelessness, negligence, or willful misconduct).

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that the district's motion to dismiss plaintiff's wrongful-discharge claim (ECF No. 5) is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 22nd day of March, 2024.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge