UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD ARNOLD, et al., **Plaintiffs,** **v.** **SECRETARY OF THE NAVY, et al.,** **Defendants.**	**Civil No. 19-2755 (JDB)**

ORDER

Plaintiffs, a group of Protestant U.S. Navy chaplains, have moved for reconsideration of one aspect of the Court's April 21, 2020 memorandum opinion and accompanying order. See Pls.' Mot. for Clarification or Recons. Concerning 10 U.S.C. § 613a & Retaliation Claims, & Other Relief & Supp. P. & A. ("Recons. Mot.") [ECF No. 35] at 1. As relevant here, the Court's April 21 opinion held that plaintiffs' attempt to challenge 10 U.S.C. § 613a—which bans discovery of the Navy's selection-board proceedings—was barred by res judicata. See Arnold v. Sec'y of Navy, 2020 WL 1930393, at *7 (D.D.C. Apr. 21, 2020). Plaintiffs ask the Court to reconsider its § 613a ruling. See Recons. Mot. at 1.

As an initial matter, plaintiffs do not identify which of the Federal Rules of Civil Procedure their motion is brought under. Although they style their motion as one "for clarification or reconsideration," id. at 1 (emphasis added), nothing in their briefing asks "the Court to further explain or clarify" anything in the April 21 opinion, Univ. of Colo. Health at Mem. Hosp. v. Burwell, 164 F. Supp. 3d 56, 61 (D.D.C. 2016). Because they instead seek to revisit the merits of

the Court's ruling, the Court will treat the motion as a motion for reconsideration under Rule 59(e).[1]

"Motions under Fed. R. Civ. P. 59(e) are disfavored and relief from judgment is granted only when the moving party establishes extraordinary circumstances." Niedermeier v. Office of Max S. Baucus, 153 F. Supp. 2d 23, 28 (D.D.C. 2001) (citing Anyanwutaku v. Moore, 151 F.3d 1053, 1057 (D.C. Cir. 1998)). "A Rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Ciralsky v. CIA, 355 F.3d 661, 671 (D.C. Cir. 2004) (quoting Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996)). Rule 59(e) "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008) (quotation omitted).

Plaintiffs do not identify an intervening change of controlling law or new evidence that would warrant reconsideration of the Court's ruling. To prevail on their motion, then, they must show that the Court committed clear error in ruling that their challenge to § 613a was barred by res judicata. But plaintiffs do not actually argue that the Court's res judicata decision was erroneous. Nothing in their motion addresses the Court's discussion of issue or claim preclusion. At most, plaintiffs argue that the underlying decision that precluded their present attack on § 613a addressed only § 613a's application to systemic claims, rather than individual claims. See Pls.' Reply to Defs.' Opp'n to Pls.' Mot. for Clarification or Reconsideration ("Reply") [ECF No. 36]

[1] The Court's April 21 opinion and order disposed of all the claims in the case by either dismissing them or severing them to become their own actions. See Apr. 21 Order [ECF No. 34]; M.M.M. ex rel. J.M.A. v. Sessions, 319 F. Supp. 3d 290, 295 (D.D.C. 2018) (noting that "[s]evered claims become independent actions that proceed separately"). As a result, Rule 59(e), rather than Rule 54(b), governs this motion. See Fed. R. Civ. P. 59(e) (governing motions to alter or amend a judgment).

at 2. This argument is precisely the same one that plaintiffs made in opposition to the Navy's motion to dismiss. Compare Recons. Mot. at 4 (arguing that by barring them from obtaining evidence of the Navy's selection board proceedings, § 613a makes it impossible for them to prove their individual retaliation claims), with Pls.' Opp'n & Resp. to Defs.' Mot. to Dismiss under Fed. R. Civ. P. 12(b)(6) [ECF No. 31] at 22 (arguing that "[d]iscovery [prohibited by § 613a] is needed because the boards and their secret proceedings are the nexus between the protected activity and the adverse employment decisions or actions resulting from the retaliation").

The Court rejected that argument as barred by res judicata, see Arnold, 2020 WL 1930393, at *7, because the underlying decision had concluded (in accordance with prior decisions in this long-running litigation against the Navy by plaintiffs and their counsel) that there is not an "unqualified right of access to information needed to prove [constitutional] claims," In re Navy Chaplaincy, 323 F. Supp. 3d 25, 51 (D.D.C. 2018). In doing so, the Court noted that its previous holding "applies with equal force whether plaintiffs challenge [§ 613a] in litigation involving systemic claims or ad hoc claims," because there is simply "no 'constitutional right to evidence in support of . . . constitutional claims,'" Arnold, 2020 WL 1930393, at *7 (quoting Navy Chaplaincy, 323 F. Supp. 3d at 51). Plaintiffs' argument to the contrary was therefore barred by res judicata, and in any event had (and continues to have) no merit.

Indeed, the arguments plaintiffs make here are the same arguments they have been making for nearly 15 years—arguments that have consistently been rejected by judges handling this litigation, despite plaintiffs' faulty suggestion that § 613a's application to their individual constitutional claims has not been "previously reviewed by this Court," Reply at 2. See, e.g., Adair v. Winter, 451 F. Supp. 2d 210, 217–22 (D.D.C. 2006) (rejecting plaintiffs' argument that the predecessor provision to § 613a was unconstitutional as applied to their individual claims,

concluding (1) evidence of selection-board proceedings was not "essential" because "plaintiffs have available to them other evidence supporting their [individual] claims," and (2) there was a total "absence of any precedent recognizing a right to statutorily privileged information in a civil case involving constitutional claims"). Plaintiffs' fourth attempt to relitigate the matter was inappropriate a month ago, as demonstrated by this Court's conclusion that the challenge to § 613a was barred by issue and claim preclusion. Nothing has changed. Indeed, it is even more inappropriate for plaintiffs and their counsel to make this fifth attempt on a Rule 59(e) motion, which may not be used to "relitigate old matters." Exxon Shipping Co., 554 U.S. at 485 n.5. The Court has already admonished plaintiffs for continuing to press the issue "despite repeated and explicit judicial warnings" to desist. Arnold, 2020 WL 1930393, at *7. It will not warn plaintiffs or their counsel again.

Plaintiffs also request as relief "two additional modifications" to the Court's April 21 opinion and order. Recons. Mot. at 8. However, their briefing makes clear that these requests are premised on the Court's agreeing with plaintiffs and "chang[ing] its § 613a holding," and that the Court need not consider the requests if it declines to "revisit[] its holding as to [§ 613a's] application to the individual claims." Reply at 4, 7. Because the Court so declines, it likewise declines to consider the additional modifications.

Accordingly, it is hereby

ORDERED that plaintiffs' [35] motion for reconsideration is **DENIED**.[2]

[2] Plaintiffs suggest that if the Court denies their motion for reconsideration, it should dismiss all remaining individual ad hoc claims "because [plaintiffs] cannot meet the criteria for a retaliation claim." Reply at 7. Previous opinions in this litigation have stated that "[a]lthough discovery into the proceedings of individual promotion boards is relevant to the plaintiffs' claims concerning individual boards' actions, such evidence is not a necessary element of a claim of religious discrimination," because "plaintiffs have available to them other evidence supporting their claims, (e.g. statistical data)" that "may constitute compelling evidence suggesting an intent to employ a denominational preference in promotion decisions." Adair, 451 F. Supp. 2d at 219. The Court therefore declines to dismiss plaintiffs' claims on that ground. If plaintiffs believe they do not have sufficient evidence to support their individual claims,

/s/
JOHN D. BATES
United States District Judge

Dated: May 18, 2020

they need not request leave of this Court to refile, and the claims will be automatically dismissed on May 21, 2020, pursuant to the Court's previous order. See Apr. 21 Order at 2.