UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT LEDERMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 99-3359 (RWR)**
	)	
UNITED STATES OF AMERICA, *et al.*,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER

In his second amended complaint, plaintiff Robert Lederman seeks damages under 42 U.S.C. § 1983 from the District of Columbia (the "District") for having been prosecuted under an unconstitutional regulation, and requests declaratory relief binding against District and the District's Attorney General, formerly known as the Corporation Counsel (collectively, the "District defendants").[1] The District defendants have moved to dismiss. Because the District defendants have not shown that Lederman can prove no set of facts supporting his § 1983 damages claim against the District, the motion will be denied as to the damages claim. Because Lederman's claim for declaratory relief

[1] Lederman's claims against other defendants have been previously disposed of. See Slip. Op., Lederman v. United States et al., Civ. A. No. 99-3359 (RWR) (D.D.C. July 1, 2003). Although the second amended complaint seeks injunctive relief against the District defendants, Lederman has since abandoned that claim. (See Pl.'s Opp'n to D.C. Defs.' Mot. to Dismiss ("Opp'n") at 3.)

is moot and because no claims remain as to the District's Attorney General, the remainder of the motion to dismiss will be granted.

BACKGROUND

An act of Congress charges the Capitol Police Board with regulating the "movement of all vehicular and other traffic . . . within the United States Capitol Grounds." 2 U.S.C. § 1969(a) (2000) (formerly codified as 40 U.S.C. § 212(b)(2000)). The statute also obligates the Mayor of the District of Columbia or his designee, upon request by the Capitol Police Board, to cooperate with the Board in preparing the regulations promulgated under authority of this statute. See 2 U.S.C. § 1969(d). Further, the statute mandates that "[p]rosecutions for violation of such regulations shall be in the Superior Court of the District of Columbia, upon information by the [Attorney General] of the District of Columbia or any of his assistants." Id. The Council of the District of Columbia elected to adopt this act of Congress in whole and without substantive alteration. See D.C. Code § 10-03.25 (2001) (formerly codified as D.C. Code § 9-127 (1981)).

Acting on this authority, the Capitol Police Board promulgated a regulation restricting "demonstration activity," including "leafleting . . . or other expressive conduct," in certain areas on the Capitol Grounds. Capitol Grounds

Regulations art. XIX § 158. No party has said whether the District's Mayor or his designee was asked to or in fact did assist in preparing this regulation.

Lederman, intending to publicize a lawsuit, distributed leaflets and carried a sign in the area of the Capitol Grounds where the regulation prohibited such activity. He was arrested and prosecuted in a criminal action brought by the District's then-Corporation Counsel in the Superior Court for the District. Lederman was acquitted when the hearing commissioner found the regulation unconstitutional on its face and as applied. See Lederman v. United States, 89 F. Supp. 2d 29, 31-32 (D.D.C. 2000).

Filing this case, Lederman obtained both a declaration that the regulation on its face infringed the free speech guarantee of the First Amendment and a permanent injunction prohibiting the Capitol Police from enforcing the regulation. Id. at 43. He now seeks damages under 42 U.S.C. § 1983 from the District for prosecuting him pursuant to its statute and custom. He also seeks to have the previously issued declaratory judgment made binding on the District defendants. (See Opp'n at 3.)

DISCUSSION

A motion to dismiss should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley

v. Gibson, 355 U.S. 41, 45-46 (1957). The complaint must be construed in the light most favorable to the plaintiff and a "court must assume the truth of all well-pleaded allegations." Warren v. Dist. of Columbia, 353 F.3d 36, 39 (D.C. Cir. 2004).

I. DAMAGES UNDER 42 U.S.C. § 1983

Section 1983 of Title 42 of the United States Code provides that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . . For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

A. A statute of the District

The parties dispute whether the regulation impermissibly infringing free speech was authorized by an "Act of Congress applicable exclusively to the District of Columbia" such that it must "be considered to be a statute of the District of Columbia." 42 U.S.C. § 1983. Lederman argues that the last sentence of § 1983 applies to the statute authorizing the promulgation of the unconstitutional regulation, and that the statute and ensuing regulation must be considered laws of the District for purposes of § 1983. (See Opp'n at 4-5.) The District defendants argue that "Capitol Police Board regulations are not within the 'narrow

sphere' of laws applicable exclusively to the District of Columbia[,]" and that the "regulations are not enacted for the general welfare of the District, but for the specific benefit of the United States Congress." (D.C. Defs.' Reply at 3.) They conclude that the statute and regulation at issue are not District laws.

Accepting Lederman's argument would require a construction of the term "exclusive" that would alter its ordinary meaning. By its express terms, the statute applies exclusively to the Capitol Grounds. See 2 U.S.C. § 1969(a) (regulating traffic only "within the United States Capitol Grounds"). Lederman argues that because the Capitol Grounds sit wholly within the District, the statute also applies exclusively to the District. Using Lederman's logic, any law that applied exclusively to the District would also apply "exclusively" to the United States, because the District sits wholly within the United States. This conclusion renders the last sentence of § 1983 meaningless. See 42 U.S.C. § 1983 ("For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."). "[T]erms in a statute should not be construed so as to render any provision of that statute meaningless or superfluous." Beck v. Prupis, 429 U.S. 494, 506 (2000) (referring to "the longstanding canon of statutory construction"); Abourezk v. Reagan, 785 F.2d

1043, 1054 (1986) (referring to the "familiar canon of statutory construction [that] cautions the court to avoid interpreting a statute in such a way as to make part of it meaningless") (citing 2A Norman J. Singer, Sutherland Statutes and Statutory Construction § 46.06 (4th ed. 1984)). Lederman does not identify, and the court is not aware of, any prior decision that would support his construction of § 1983's term, "applicable exclusively to the District of Columbia."[2]

Here, however, it is not necessary to decide whether the statute, which pertains exclusively to regulating traffic on the Capitol Grounds, is within the class of statutes reached by the last sentence of § 1983. In this case, the District Council affirmatively adopted the statute in question and thus, by its

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[2] A comparison of this law with laws that do apply exclusively to the District only bolsters the conclusion that a law applying exclusively to the Capitol Grounds is not one that applies exclusively to the District. Laws that have been held to apply exclusively to the District are concerned with the welfare and rights of District residents District-wide, not merely the regulation of traffic on federal property. See, e.g., Fletcher v. Dist. of Columbia, 370 F.3d 1223, 1228 (D.C. Cir. 2004) (stating that the National Capital Revitalization and Self-Government Act of 1997 passed by Congress and governing parole for District prisoners, is a District of Columbia law for purposes of § 1983); Turner v. Dist. of Columbia Bd. of Elections and Ethics, 354 F.3d 890, 897 (D.C. Cir. 2004) (stating that the Barr Amendment to the District of Columbia Appropriations Act, passed by Congress and barring the use of appropriated funds for conducting certain ballot initiatives in the District, is a District of Columbia law for purposes of § 1983); McKinney-Byrd Academy Public Charter School v. Dist. of Columbia, Civil Action No. 04-2230 (RBW), 2005 WL 1902873 (D.D.C. July 21, 2005) (finding that the District of Columbia School Reform Act, passed by Congress, applied exclusively to the District).

action, officials with authority to speak for the District made it a District statute. See Monell v. Dep't of Soc. Servs. of the City of New York, 436 U.S. 658, 694 (1978) ("[I]t is when execution of a [local] government's policy or custom, whether made by its lawmakers or by those whose edicts or act may fairly be said to represent official policy, inflicts the injury that the [local] government as an entity is responsible under § 1983.").

B. The District's responsibility for the regulation

The District defendants also argue that the District is not subject to municipal liability under § 1983 because it is not responsible for promulgating the unconstitutional regulation. Any § 1983 municipal liability must be premised on the municipality's responsibility for the offending official policy or custom. See id. A plaintiff must "show fault on the part of the city based on a course of action its policy-makers consciously chose to pursue." Carter v. Dist. of Columbia, 795 F.2d 116, 122 (D.C. Cir. 1986). "A city is answerable under [§ 1983] when an official policy or custom causes the complainant to suffer a deprivation of [a] constitutional right. To hold a municipality accountable, the plaintiff must establish that the official policy or custom itself is 'the moving force of the constitutional violation.'" Id. (quoting Monell, 436 U.S. at 694 and citing Polk County v. Dodson, 454 U.S. 312, 326 (1981)).

"[M]unicipal liability under § 1983 attaches where -- and only where -- a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembauer v. City of Cincinnati, 475 U.S. 469, 483 (1986). Where "the local officials could not act otherwise without violating state or federal law," and where local "officials have no discretion that they could exercise in the plaintiff's favor," a local government does not incur responsibility under § 1983. Bethesda Lutheran Homes and Servs. v. Leean, 154 F.3d 716, 718 (7th Cir. 1998).

Here, relying heavily on the holding in Bethesda Lutheran, the District defendants argue that the District cannot be held liable for § 1983 damages because the regulation was promulgated under authority of an act of Congress and the District had no choice but to accede to Congress' dictate. It is true that Congress is the ultimate legislative authority for the District and may delegate and revoke that authority as it wishes. See Fireman's Ins. Co. of Washington, D.C. v. Dist. of Columbia, 483 F.2d 1323, 1327 (D.C. Cir. 1971) (citing Dist. of Columbia v. Thompson Co., 346 U.S. 100, 109 (1953)) (footnotes omitted). In case of conflict, acts of Congress prevail over enactments by the municipal authority of the District. Md. & D.C. Rifle & Pistol Ass'n, Inc. v. Washington, 442 F.2d 123, 130 (1971). Still, the

District defendants' argument that the District is not responsible for Lederman's injury suffers from two fatal flaws. First, it rests on the false premise that the District was without a choice and ignores the fact that the District elected to adopt the statute under which the regulation was promulgated. The District was not obligated to adopt the statute as its own, even though it was prohibited from enacting any statute to amend or repeal the act passed by Congress. See D.C. Code § 1-206.02(a)(3) (2001) (prohibiting the Council from "[e]nact[ing] any act, or enact[ing] any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States . . . ."). See also, generally, D.C. Code § 1-201.01 et seq. (2001) ("District of Columbia Home Rule Act") (setting forth the restrictions and obligations of the Council vis-a-vis Congress, and not requiring the Council to adopt any act of Congress concerned with regulating traffic on the Capitol Grounds).

Second, the argument ignores the fact that Lederman does not seek damages for the existence of the regulation, but for his prosecution by the District's Attorney General who acted under color of District law and in accord with District policy and custom in undertaking his prosecution. (See Sec. Am. Compl. ¶¶ 49-50.) The governing statute does not require the District's Attorney General actually to prosecute all violations of the

Capitol Police Board regulations. It merely identifies by whom the prosecutions will be undertaken and where they will be heard *if* they are brought at all. Thus, the statute mandates the choice of prosecutors, but not the prosecutor's choices. Public prosecutors across this nation, and in the District, are professionally obligated to screen cases according to various criteria, not the least of which is legal soundness. In prosecuting Lederman, the District's Attorney General chose from among alternatives which included not to prosecute Lederman. The Attorney General acted under color of a District statute and executed the District's "policy or custom, . . . made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy[.]" Monell, 436 U.S. at 694.

C. Prosecutorial immunity

The District defendants also argue that the same prosecutorial immunity, recognized in Imbler v. Pachtman, 424 U.S. 409 (1976), that protects prosecutors from individual liability extends to immunize the District. (See D.C. Defs.' Mot. to Dismiss at 4-7.) In support of their position, the District defendants argue that the Supreme Court's reasoning in Kalina v. Fletcher, 522 U.S. 118 (1997), which emphasized protecting prosecutorial decision-making rather than the individual prosecutor, implicitly establishes that a personal

immunity defense may be extended to protect a municipality from liability.

The District defendants' argument is founded on phrases from the Kalina opinion that are taken out of context, and stretches Kalina beyond its limits. The holding in Kalina is limited to the rule that when a prosecutor performs a function that is not exclusively a prosecutorial function, the traditional personal immunity extended to a prosecutor does not apply. 522 U.S. at 124-30. Furthermore, the District defendants' argument directly contravenes the express rule that a municipal corporation does not, by extension, enjoy the benefit of the personal immunities defenses of its officials and employees. Owen v. City of Independence, 445 U.S. 622, 650-52 (1980) (discussing and rejecting the argument that personal immunity may be extended to a municipal corporation). The District defendants have not shown that the rule of Owen has lost it vitality or does not apply to these facts.

In sum, the District defendants have not shown that Lederman can prove no set of facts consistent with his allegations that the District's Attorney General was acting under color of District law, custom or policy in prosecuting Lederman for violating the unconstitutional regulation. Accordingly, the District defendants' motion to dismiss Lederman's § 1983 damages claim against the District will be denied.

II. DECLARATORY RELIEF

Lederman asks that the declaratory judgment issued March 14, 2000, see Lederman v. United States, 89 F. Supp. 2d at 43, and affirmed by the Court of Appeals for the District of Columbia Circuit, 291 F.3d 36, 48 (2002), be made applicable to the District defendants. (See Opp'n at 3.) Because the judgment has already declared the regulation unconstitutional, the regulation cannot serve as the basis for prosecution by any entity, and there is no reasonable basis on which to expect any further such prosecutions. See Buckhannon Board and Care Home, Inc. v. W. Va. Dep't of Health and Human Resources, 532 U.S. 598, 609 (2001) (suggesting that a case seeking equitable relief could be moot where "it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur'") (citing Friends of the Earth, Inc. v. Laidlaw Env. Servs., Inc., 528 U.S. 167, 189 (2000). This relief Lederman seeks is superfluous and his claim is moot. The District defendants' motion to dismiss will be granted as to Lederman's claim for declaratory relief.

III. CLAIMS AGAINST THE ATTORNEY GENERAL

Lederman no longer seeks prospective injunctive relief against the District's Attorney General. See n.1., supra. The claim for declaratory relief as to the Attorney General is being dismissed as moot. Any claim for damages against the Attorney General in her official capacity is duplicative of the claim

against the District itself. See Atchinson v. Dist. of Columbia, 73 F.3d 418, 424 (D.C. Cir. 1996) ("A section 1983 suit for damages against municipal officials in their official capacities is thus equivalent to a suit against the municipality itself."); Moment v. Dist. of Columbia, Civil Action No. 05-2470 (RWR), 2007 WL 861138, *1 n.3 (D.D.C. Mar. 20, 2007) (dismissing as duplicative an official capacity suit against the mayor because "'an official-capacity suit is . . . to be treated as a suit against the entity'") (quoting Kentucky v. Graham, 473 U.S. 159, 166 (1985)). The official capacity claim against the District's Attorney General will be dismissed as redundant. Accordingly, no claims against the Attorney General remain, and the Attorney General will be dismissed as a defendant from this suit.

CONCLUSION AND ORDER

The District defendants have not shown that Lederman can prove no set of facts to support adequately his § 1983 claim against the District. Lederman's claim for declaratory relief is moot, and no claims remain as to the District's Attorney General. Accordingly, it is hereby

ORDERED that the District defendants' motion [120] to dismiss be, and hereby is, DENIED in part and GRANTED in part. The motion to dismiss Lederman's § 1983 claim against the District for damages is denied. The motion to dismiss Lederman's

request for declaratory relief and to dismiss the Attorney General from the suit is granted. It is further

ORDERED that the District shall have until May 14, 2007 to file an answer to the second amended complaint.

SIGNED this 13th day of April, 2007.

/s/
RICHARD W. ROBERTS
United States District Judge