

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

POLLY OLSEN,

Plaintiff,

v.

Case No. 18-cv-1366

NORTHEAST WISCONSIN
TECHNICAL COLLEGE, et al.,

Defendants.

**DEFENDANTS' RULE 7(H) EXPEDITED NON-DISPOSITIVE
MOTION FOR LEAVE TO FILE A SURREPLY**

Via her summary judgment reply brief, the plaintiff, Polly Olsen (“Olsen”) has brought a series of unripe assertions pertaining to NWTC’s new Freedom of Speech, Expression and Public Assembly Policy (the “New Policy”), which replaced the repealed Public Assembly Policy (the “Public Assembly Policy”) central to this lawsuit. As these assertions were not before the Court as part of Olsen’s originally filed Motion for Summary Judgment and the response thereto filed by Defendants (collectively, “NWTC”), NWTC has had no opportunity to respond to such assertions. NWTC, therefore, respectfully moves the Court, pursuant to Civil Local Rule 7(h), for leave to file a surreply to Ms. Olsen’s reply brief (Docket No. 22). Consistent with Civil Local Rule 7(i), NWTC’s proposed surreply is attached to this motion.

“The decision to permit the filing of a surreply is purely discretionary and should generally be allowed only for valid reasons, such as when the movant raises new arguments in a reply brief.” *Meraz–Camacho v. United States*, 417 F. Appx. 558, 559 (7th Cir. 2011); *see also Schmidt v. Eagle Waste & Recycling, Inc.*, 599 F.3d 626, 631 n.2 (7th Cir. 2010). NWTC requests

a surreply because Olsen spends a great deal of her reply brief arguing that the New Policy precludes the Court from finding her facial challenges to the previous policy moot and that the New Policy, itself, is unconstitutional.

In this lawsuit, Olsen claims, in significant part, that NWTC's Public Assembly Policy was an unconstitutional limitation on student speech, that it was an unconstitutional prior restraint on student speech, and that it was unconstitutionally vague and overbroad. *See generally* Compl. (Dkt. 1); Pl.'s Br. in Supp. (Dkt. 12). Olsen's summary judgment motion, and NWTC's response, focus solely on the Public Assembly Policy. Specifically, in its summary judgment response, NWTC noted that the February 2018 Policy was recently replaced by a new policy, so Olsen's facial challenge claims were moot. *See generally* Defs.' Br. in Resp. (Dkt. 17).

In her reply brief, Olsen spends four pages now asserting that she has standing to bring her claim because the New Policy is substantively identical to the Public Assembly Policy. *See* Pl.'s Reply Br. (Dkt. 22), at pp. 2–5. Olsen spends seven pages then bringing an unripe constitutional challenge to the facial validity of the New Policy.. *See id.* at 6 (“II. NWTC’S NEW POLICY IS FACIALLY UNCONSTITUTIONAL.”).

Such a challenge is unripe and inappropriate for a reply brief when such allegations are not currently before the Court on the pleadings.¹ *See Constr. and Gen. Laborers’ Union No. 330 v. Town of Grand Chute*, 915 F.3d 1120, 1127 (7th Cir. 2019) (explaining that a Union’s allegations about the protests it might have conducted are too speculative to bring a ripe dispute under the first amendment); *Boswell v. McGinnis*, No. 96-1490, 1997 WL 428965 (6th Cir.

¹ Defendants note that Olsen has asked in a footnote for leave to amend her complaint as to her allegations about the New Policy. *See* Pl.'s Reply Br. at 5 n.4. NWTC notes that such leave has not been granted. NWTC also notes that making such a request, as a footnote, violates Civil Local Rule 15(b), which requires all requests to amend a pleading to state specifically what changes are sought by the proposed amendments and requires the proposed amended pleading, reproduced in its entirety, to be attached to the request.

1997) (explaining that because there was no pleading challenging the new policy, by ruling on the constitutionality of the new policy, the court “improperly rendered an advisory opinion without a ripe ‘case’ or ‘controversy’ within the meaning of Article III, § 2, of the United States Constitution”).

Because Olsen spends so much of her reply brief raising new arguments, as to a new policy, Defendants request leave to file a surreply (attached) to address the merits of Olsen’s new, unavailing arguments.

Respectfully submitted this 11th day of April, 2019.

DAVIS & KUELTHAU, S.C.
Attorneys for Defendants

/s/ Anthony J. Steffek

Anthony J. Steffek, WI Bar No. 1053615
920-431-2237, asteffek@dkattorneys.com
Kathy L. Nusslock, WI Bar No. 1014027
414-225-1447; knusslock@dkattorneys.com
MAILING ADDRESS:
318 South Washington Street, Suite 300
Green Bay, WI 54301