



December 29, 2015

CLERK'S OFFICE  
U.S. Court of Appeals  
Room 2722  
219 S. Dearborn Street  
Chicago, IL 60604

**Re: *Kimberly Hively v. Ivy Tech. Community College,*  
*Docket #: 15-1720***

Dear Clerk of Court:

Pursuant to FRAP 28(j) and Seventh Circuit Rule 28(j), Appellant Kimberly Hively submits this response to Ivy Tech's December 21, 2015 FRAP 28(j) letter.

The federal decisions Ivy Tech cites from New York, *Dingle v. Bimbo Bakeries*, 2015 U.S. App. LEXIS 21787 (2nd Cir. Dec. 16, 2015), and *Moore v. Greyhound BusLines*, 2015 U.S. Dist. LEXIS 141055 (E.D. N.Y. Oct. 16, 2015), are nothing more than adherence to prior precedents. They contain no legal analysis of arguments that Title VII covers sexual orientation discrimination and no indication that such arguments were even raised by the pro se plaintiffs in those cases.

It is curious that Ivy Tech would cite *Pittman v. Cook Paper Recycling Corp.*, 2015 Mo. App. 1090 (Oct. 27, 2015), while being disdainful of *Videckis v. Pepperdine Univ.*, No. 15-002982015, U.S. Dist. LEXIS 167672 (C.D. Cal. Dec. 16, 2015), as a "Title IX case." In holding that its state statute did not cover sexual orientation discrimination, the majority of the *Pittman* court specifically disclaimed the reach of Title VII precedent and, in so doing, confirmed that the intent of the Missouri Legislature was of paramount importance. By contrast, Title VII jurisprudence holds that it is the language of the statute, not the intent of those who passed it, that dictates the interpretation of the statute. Compare *Pittman*, 2015 Mo. App. LEXIS at \*12 n.8 ("We decline to rely on an administrative interpretation of the term 'sex' under Title VII to declare the intent of the Missouri Legislature on a Missouri statute, especially on a matter that involves public policy.") (emphasis supplied) with *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 79 (the intent of Congress in passing Title VII does not define the scope of what constitutes sex discrimination). Meanwhile, *Videckis* may be a Title IX case, but the court stated, "[i]n interpreting Title IX, courts often look to interpretations of Title VII for reference." *Videckis*, U.S. Dist. LEXIS 167672 at \*14, citing *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992).

Respectfully submitted,

/s/  
Gregory R. Nevins

Cc: Counsel of Record (via Court ECF)

## **CERTIFICATE OF SERVICE**

I certify that on December 29, 2015, I utilized this court's ECF system to file a copy, resulting in the automatic service of counsel of record.

So certified this 29<sup>th</sup> day of December, 2015.

/s/

Gregory R. Nevins