

and worse, the statement was false and cast a stigma upon her. Then the teacher was transferred to a teaching position that was more arduous and for which she had no experience. And by virtue of the fact she had to disclose the suspension to potential future employers, the district has impeded her teaching career and the teacher is stuck at a school district that took her for task for merely referencing her future spouse as other heterosexual teachers had.

Bailey's extensive pleading easily meets the threshold set by *Twombly*. Likewise, Bailey's pleading sets forth a custom and policy which meets the threshold set by *Monell*.

The Constitution clearly protects same sex marriages. Moreover, the Constitution clearly prohibits discrimination by a government employer against an teacher based upon her sexual orientation.

Bailey states a claim for monetary damages by setting forth that because she was a lesbian who shared she was marrying a woman her rights were violated by placing her on an eight-month administrative leave, discussing non-renewal of her contract, asking Bailey to quit, issuing a false statement about Bailey's employment to the public contrary to usual practice, falsely suggesting she had engaged in unprofessional acts, creating a stigma about Bailey, removing her from an elementary school teaching position and assigning her to a more onerous position in a high school, and making it more difficult for her to obtain another teaching position with another school district by unnecessarily placing her on an extended administrative leave are a series of adverse actions that when considered separately and together establish an adverse action.

As more fully discussed in Plaintiff's Brief in Support of her response, Bailey's pleading presents a case afforded protection by the Constitution and is afforded a remedy by section 1983. Accordingly, Bailey asserts the 12(b)(6) motion should be dismissed. Alternatively, Bailey should

be afforded the opportunity to amend her complaint to address any infirmities identified by the Court.

II.

PRAYER

Taking Bailey's pleading as a whole, it is clear Bailey has pled claims of discrimination based upon her sexual orientation and in violation of her right to marry against Defendants for which relief can be granted. Defendants actions have thrown daunting obstacles in her career that have not been visited upon teachers with opposite sex spouses.

Accordingly, because Bailey has stated a claim upon which relief can be granted, Defendants' Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim should be denied. Alternatively, Bailey should be granted an opportunity to amend her pleading to address any issues identified by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court and in accordance with the Federal Rules of Civil Procedure. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: Thomas E. Myers.

/s/ JASON C.N. SMITH
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