

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

NICHOLAS CHARLES BRIENER,
Plaintiff,

V.

**BOARD OF EDUCATION OF
MONTGOMERY COUNTY,**
Defendant.

CIVIL ACTION NO. 5:18-351-KKC

OPINION AND ORDER

*** **

This matter is before the Court on the motion to dismiss (DE 6) by defendant Board of Education of Montgomery County. The Court must grant the motion.

Plaintiff Nicholas Charles Briener alleges that he was subjected to disparate treatment and ultimately fired by the Board after revealing that he was bisexual. He asserts a claim for “discrimination based on his sexual orientation in violation of Title VII.” (DE 1, Complaint, Prayer for Relief, ¶A & ¶¶ 21, 22.) This is the sole claim asserted by Briener.

Title VII forbids employers and labor organizations from “discriminat[ing] against any individual . . . because of such individual's race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2(a)(1). Briener recognizes that the Sixth Circuit has ruled that “sexual orientation is not a prohibited basis for discriminatory acts under Title VII.” *Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757, 762 (6th Cir.2006). “A claim premised on sexual-orientation discrimination thus does not state a claim upon which relief may be granted.” *Gilbert v. Country Music Ass'n, Inc.*, 432 F. App'x 516, 519 (6th Cir. 2011). Despite this ruling, Briener argues this

Court “has the authority to make a determination, independent of Sixth Circuit precedent.” (DE 8, Response at 6.) This is incorrect.

Though recognizing “practical problems” with its current interpretation of Title VII, the Sixth Circuit has ruled that *Vickers* “remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting *en banc* overrules the prior decision.” *Tumminello v. Father Ryan High Sch., Inc.*, 678 F. App'x 281, 285 (6th Cir.), *cert. denied*, 138 S. Ct. 121 (2017). Thus, this Court is bound by it.

For all these reasons, the Court hereby ORDERS that the Board’s motion to dismiss (DE 6) is GRANTED.

Dated January 25, 2019.



A handwritten signature in cursive script that reads "Karen K. Caldwell".

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY