

**UNITED STATES COURT OF APPEALS
FOR THE 6TH CIRCUIT
CASE NO.: 19-5123**

Electronically Filed

NICHOLAS CHARLES BREINER

APPELLANT

V.

**APPELLANT'S MOTION
TO PLACE APPEAL
ON ACTIVE DOCKET**

**BOARD OF EDUCATION
OF MONTGOMERY COUNTY**

APPELLEE

Comes now the Appellant, Nicholas Breiner, by and through is counsel, and moves the Court for an Order to place the Appeal on the Court's active Docket. In support of said Motion the Appellant states:

PROCEDURAL HISTORY

On May 3, 2018 the Appellant filed his original Complaint in the Eastern District of Kentucky Central Division at Lexington. The Plaintiff's Complaint alleged a violation of Title VII when he was terminated from his employment with the Board of Education of Montgomery County due to his sexual orientation.

The Appellee filed its Motion to Dismiss (D.E. 6) on May 17, 2018, citing the Sixth Circuit Opinion in Vickers v. Fairfield Med. Ctr., 453 F3d 757 (6th Cir. 2006) On January 25, 2019 the District Court dismissed, citing Gilbert v. Country Music Ass'n, 432 F. App'x 516 (6th Cir. 2011) (D.E. 10). The Appellant timely appealed.

On April 29, 2019 the Court held the Appeal in abeyance due to the fact that the Supreme Court was reviewing the issue of whether an allegation of employment of discrimination brought under Title VII included protection for LBGQT employees (6th Cir. - D.E. 18).

On June 15, 2020 the Supreme Court's decision in Bostock v. Clayton Cty., Nos. 17-1618, 17-1623, 18-107, 2020 U.S. LEXIS 3252 (June 15, 2020) extended Title VII of the Civil Rights Act of 1964, which prohibits discrimination "because of sex," to include LGBTQ employees.

Since the Supreme Court was definitive that Title VII's prohibition against discrimination due to an employee's sexual orientation is covered under Title VII, the Appeal is ready to move forward.

Therefore, the Appellant respectfully requests the Sixth Circuit enter an Order placing the Appeal on the active docket.

Respectfully Submitted,

/s/ Edward E. Dove
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was mailed this the 17th day of June, 2020 to:

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/s/ Edward E. Dove
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