

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>KIRSTEN ANDERSON,</p> <p>Plaintiff,</p> <p>vs.</p> <p>THE STATE OF IOWA, THE IOWA SENATE, THE IOWA SENATE REPUBLICAN CAUCUS, STATE SENATOR BILL DIX, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, ERIC JOHANSEN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, AND ED FAILOR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,</p> <p>Defendants.</p>	<p>CASE NO. LAACL131321</p> <p>AMENDED AND SUBSTITUTED PETITION AT LAW</p>
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COMES NOW the Plaintiff, Kirsten Anderson ("Anderson"), and in support of her Petition against the State of Iowa, the Iowa Senate, the Iowa Senate Republican Caucus, State Senator Bill Dix, Eric Johansen, and Ed Failor ("Defendants"), states as follows:

I. INTRODUCTION

1. Is the Iowa Senate, and more specifically the Iowa Senate Republican Caucus, a place where women can work without the anxiety of having to run a gauntlet of sexual treatment, gossip, and innuendo? Is the Iowa Senate Republican Caucus a club meant for men only, where women are allowed but must tolerate boorish sophomoric behavior just to earn a living? Do we expect our mothers, daughters, sisters, and friends to get fair and equal treatment at work? In this case, Kirsten Anderson places these issues before

the court and before a jury of her peers to evaluate her claims, to evaluate the defenses raised by the Senate and the individuals, and ultimately to render a verdict. Anderson believes the evidence will demonstrate that she and other women who worked in the Senate Republican Caucus experienced harassment and other discriminatory treatment on a regular and consistent basis. Anderson, through this case, sets out to prove not only that she and other women experienced this type of conduct regularly, but that after she complained about the harassment, she was punished for it, ultimately being fired despite the fact that under the rules of the Senate she could not be fired other than for just cause.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter as the value exceeds the small claims jurisdictional amount.

3. Venue is appropriate in this Court as all actions complained of herein occurred in Des Moines, Polk County, Iowa and the State Capitol, and the base of operations for the state is also in Des Moines, Iowa.

III. PARTIES

4. At material times hereto, Kirsten Anderson, a citizen of the United States, has been a resident of Des Moines, Polk County, Iowa.

5. The State of Iowa ("the State") is a sovereign state organized pursuant to the Constitution of and pursuant to the laws of the State of Iowa, and at all times material hereto was Anderson's employer.

6. The Iowa Senate, is a branch of the Iowa General Assembly.

7. The Iowa Senate Republican Caucus is part of the Iowa Senate.

8. Senator Bill Dix (“Dix”) of Shell Rock, was at times material hereto, the duly elected leader of the Republican Caucus.

9. Eric Johansen (“Johansen”) was at times material hereto employed by the Senate and particularly by the Republican Caucus as Staff Director.

10. Ed Failor (“Failor”) was at times material hereto employed as a primary advisor to the Senate Minority Leader in the Minority Leader’s office.

IV. FACTUAL BACKGROUND

11. Anderson began working for the State on February 1, 2008, in the Iowa Senate Republican Caucus as Communications Director.

12. The Iowa Senate is a body comprised of 50 members, divided into two caucuses, the Democratic and Republican.

13. While there is no gender requirement for serving in the Iowa Senate, it is comprised primarily of men.

14. At the time of Anderson’s termination, women made up approximately one-fifth of the Iowa Senate, on both sides of the aisle.

15. More particularly, the Iowa Senate appeared to Anderson to be an environment that allowed ordinary sexism and fraternity behavior to flourish.

16. As will be detailed herein, the Iowa Senate, and particularly the Republican Caucus was an environment that permitted, if not encouraged, inappropriate and sexually discriminatory behavior.

17. By way of just one example, Sen. Joni Ernst of Red Oak and Sen. Sandra Greiner of Keota witnessed sexual innuendo and inappropriate

behavior exhibited by their male colleagues and did and said nothing while female staffers stood by unable to say anything.

18. Beginning in 2010 Anderson's work environment became even more toxic when one senior analyst ("the senior analyst") in the Republican staff office often talked openly and negatively about women, referring to them often in the most derogatory and vile terms.

19. In 2011, Senator Shawn Hamerlinck of Dewitt said to Anderson that she was "one of the boys," many times throughout the year. Hamerlinck often talked about women's breasts, and also often discussed which lobbyists were bigger flirts with Iowa House members in front of Anderson on the Senate floor.

20. During the 2012 session, Senator Merlin Bartz of Grafton would make comments that Anderson's shoes were not "classy enough" and that he liked and disliked certain pairs of her shoes, also commenting on which way he liked Anderson's hair, wavy or straight.

21. The senior analyst once called Anderson to his desk and asked her to look at something on his computer, which turned out to be a picture of a naked woman. That analyst's behavior became so problematic that Anderson and a female colleague went to the Staff Director at that time, Peter Matthes, and asked him to put a stop to the behavior of the senior analyst.

22. In early November 2012, Senator Tim Kapucian of Keystone came into the Republican staff office where staffers, including Anderson, were chatting about the newly elected senators.

23. During the discussion and in front of Sen. Kapuchian, the senior analyst mentioned that he heard that a female Democratic senator was “loose.” Sen. Kapucian asked about what he meant and the analyst replied that the senator got around with the entire college baseball team back when she was in college, and they laughed.

24. Anderson attempted to diffuse and redirect the discussion. The men laughed.

25. Later the same day, Anderson went to her supervisor, John Hodges, to disclose the incident telling him that it was inappropriate and she did not like it. Hodges responded by giving Anderson the option of what she would like to have done, either: (1) he would talk to the analyst over coffee and politely ask him to stop the sex talk in the office, or (2) he would file a formal complaint which would get the senior analyst in trouble and put a black mark on his personnel file.

26. Failor joined the minority staff offices in December 2012 to serve as Sen. Dix’s primary adviser.

27. Failor did not have formal supervisory authority over Anderson or other staff members in the Republican Caucus.

28. As the minority leader’s primary aide, Failor, unlike staff office employees such as Anderson, could actively campaign for candidates and work on fundraising.

29. On December 30, 2012, in the afternoon, the Republican staff gathered in the conference room to work on a script for the 2013 Senators' Retreat.

30. In attendance at the meeting from the staff office were Pam Dugdale, Russ Trimble, Josh Bronsink, Jim Friedrich, and Anderson. A half hour into the meeting Failor joined the group asking about potential clerks that Sen. Dix could hire for the session. Several names came up but when one person, a female, was mentioned, the senior analyst made the comment that "She likes the rhythm." Failor asked what that meant and the analyst elaborated that, "She likes black dick."

31. Anderson and her female counterpart audibly expressed their disapproval and told the analyst that his behavior needed to stop. Failor said he didn't need to know that information and left the room.

32. On January 2, 2013, Anderson and her female colleague were called into Failor's office where he told them that what the senior analyst said several days before was unacceptable and that it would not continue. Failor stated that he noticed that the Senate had no formal handbook or training for harassment or sexual harassment. He also asked if this kind of conduct had happened before. Anderson and her coworker told Failor of Anderson's report in November of 2012.

33. Failor told the women he felt that it was best to ask the senior analyst to stop with the language and that their identities/complaint would be kept confidential. Failor also stated he wanted to follow up with a staff meeting

to reinforce a safe work environment and also stated he would talk to Mike Marshall, Senate Secretary, ("Marshall"), about implementing sexual harassment policies.

34. The senior analyst came into the office from submitting papers behind the Secretary of the Senate's office and bragged about a female worker in the Secretary's office whose breasts rubbed up against his back. The men present laughed, stating doubt. The discussion about the size of the woman's breasts continued.

35. On or about January 7, 2013, the senior analyst had a meeting with Failor and came back into the office upset, handing Anderson's female coworker a piece of paper stating that the two women had made a complaint about the inappropriate comments he had made.

36. In this same time frame, Anderson and her female coworker met with Marshall about the sexual harassment policy.

37. During the meeting Marshall admitted to the women that the policy was extremely dated and in need of revision.

38. At the same meeting Marshall said he would look into the matter and update the policy.

39. Anderson later found out that the policy as it existed was not only dated it was incomplete, literally incomplete, being comprised only of every other page of what once existed as a complete document.

40. On January 10, 2014, there was a staff meeting in Sen. Dix's office to talk about being a team and having a safe work environment, which

Anderson had to join by telephone. Only once was there mention of having a safe work environment. Sen. Dix did not specify any one incident, stating only that there had been an incident and that there was a zero tolerance for this sort of thing. He stated the staff needed to work together to have a safe work environment and he expected good things for the 2013 Legislative Session.

41. After the meeting, each person Anderson talked with expressed confusion about the meeting. By this time, the senior analyst was not talking to anyone in the office and the other males were asking Anderson and her female coworker a lot of questions.

42. In January 2013, Anderson was awarded with a salary increase evidencing positive work performance for the prior year.

43. Only one other staff office employee was awarded an increase at that time.

44. On January 24, 2013, Anderson was told by Failor to never use contractions and possessives, including plural possessives in all her future writing and was told she “would be fined” if she did, specifically by making her buy him Oreo cookies. Later that day, Anderson was also told by Failor that her relationship with the Capitol press corp should be as though she was “Trying to get them to go to prom with [her].”

45. On or about January 31, 2013, and for the first time during her tenure with the office, Anderson was called into a meeting with Failor and Johansen at which she was told her work should have “fewer mistakes,” among other things.

46. Though she was confused by the feedback, Anderson was the proverbial team player and did the best she could to satisfy Failor's ill-defined directives.

47. Shortly after the meeting one of Failor's colleagues in the Minority Leader's office, Tracie Gibler began marking up Anderson's draft work, offering comments and suggestions even though she was not in Anderson's supervisory chain of command.

48. On multiple occasions in the weeks and months that followed, Anderson sought feedback and direction regarding the content of her work. Other than revisions and mark-ups of her draft work product, none was given.

49. In late January and early February 2013, Failor made several comments to Anderson about her clothing choices.

50. In February 2013, Anderson followed up with Johansen about the status of the implementation of the sexual harassment policy. He stated that he didn't have an answer but would check. He also mentioned that Anderson should feel comfortable coming to him if bad behavior occurs.

51. In March 2013, Marshall talked to Anderson privately about the implementation of the sexual harassment policy, telling her he crafted a potential new policy based on the old document and took it to leadership, both Republicans and Democrats. Marshall told Anderson that leadership felt that they needed to look it over and research the Code citations Marshall gave them. He said leadership also decided that they could not force any senators to

attend a training session and that it would be best to take action after the 2013 Legislative Session was over.

52. On May 1, 2013, Failor asked Anderson to prepare a statement defending Sen. Kent Sorensen of Milo, from charges of illegally accepting money in exchange for shifting his endorsement for the Republican nomination for President from Michelle Bachman to Ron Paul.

53. Initially Failor dictated to Anderson what he wanted the statement to say.

54. At the time the Senate Ethics Committee had been investigating Sen. Sorensen.

55. Later in the day Failor gave Anderson court documents to scan and email to the press with the statement proclaiming Sen. Sorensen's statement.

56. While scanning the statement and attachments, an error in the scanner caused pages to stick together.

57. The error in scanning rendered the document sent to the press incomplete, which Anderson was unaware of until Failor called her at home at 9:45 p.m. that night.

58. Failor instructed Anderson to go back to work that night and re-send it to the intended recipients.

59. It is an unresolved question as of this filing whether Failor was asking Anderson, in preparing this documentation regarding Sorenson, to engage in work that was not related to the work of the Iowa Legislature, and,

therefore, work that she was not allowed to perform. But, that is how Failor operated.

60. On May 10, 2013, all staff was told they could leave for the day at 4:00 p.m. At approximately 3:00 p.m. that day, Anderson was told to attend a meeting with Johansen at Sen. Dix's office at 4:00 p.m.

61. Upon arriving, Anderson found Gibler there with Johansen who told Anderson that her work product was "still not where it needed to be." Johansen stated he had hoped that she had taken to heart the writing suggestions made during a meeting that took place in February but no documentation, discussion or follow-up had occurred since this February meeting.

62. Johansen then told Anderson that because he had not seen the improvement in her writing, that she would be entitled to, "a few more weeks" to get her work up to the appropriate level and would then be re-evaluated. Anderson asked about consequences and the reply was that it would be discussed at that time. Anderson then argued that she thought she was doing just fine with her work product and had not been told otherwise since January, that their media meetings had ceased and Gibler was sending her versions of Anderson's corrected work with no further discussion.

63. Johansen then told Anderson that she had numerous grammatical errors, that entire paragraphs were not necessary, and that her work did not flow the way he liked.

64. Johansen argued multiple times that Anderson's work product was not at the level it needed to be and it needed to be better, but gave no parameters and no specifics. Anderson then inquired if her other work was at the appropriate level, and Johansen simply said he was only basing this discussion on the newsletter writing because it is the largest body of work in existence.

65. Johansen then stated that Anderson was a great person and a great presence in the office. Anderson responded that it didn't really matter if her work was sub-par, telling him, through tears, that she had been giving it her all during session.

66. Anderson then stated that it was difficult to do work that pleased Failor and that if he was not happy with her at the end of the session it would not matter. They told Anderson that she needed to think of subjects for this coming week's newsletter and discussed ideas. Johansen made an ending statement that Anderson's work product needed to be better and she should work on it. The meeting was over.

67. On May 17, 2013, Anderson sent a memo to Johansen which stated:

- At our meeting on May 10, 2013, you and Tracie gave me an update on my work product and how it is not satisfactory for the Senate Republican Caucus. You stated my work product has not made satisfactory improvements since an earlier request you made on January 31 of 2013. At both meetings you and Ed (at the

1/31/13 meeting) requested that my work – specifically the Bottom Line newsletter articles – have “fewer mistakes,” “flow better,” and have fewer unnecessary words incorporated into the text, as well as have sentences ending in prepositions removed. Ed has also stated that I am not to use contractions or plural possessives at any time in any of my writing. I have been striving to meet these requirements throughout the 2013 Legislative Session. To this point I have attempted to loyally follow direction hoping that we can move forward constructively. I have never had complaints regarding my final work product and have always worked collaboratively with senators and staff to work through versions of draft products.

- I am writing this now to document my disagreement with the criticisms of my work and challenge your motives in bringing them to me. You, Ed, and Tracie criticize my draft work with no collaboration or insight. During the 1/31/13 meeting, Ed was condescending, patronizing and went so far as to tell me I couldn't write at a high school level, implying he was teaching me college English.
- During the May 10 meeting you continually referenced the February meeting (it was actually 1/31/13) that took place. I am specifically requesting in writing the changes you require in my work product, specifically for the Bottom Line newsletter as you

allege, is the biggest body of my work on which you base your claims. Specifically it would be useful to give concrete examples from my final work product as opposed to work-in-progress. I would also like you to specify the time period which I have to make these “progressive changes.” During our 5/10 meeting you mentioned, “a few weeks” would pass and I would then be re-evaluated. While I believe these criticisms are unfounded and unfair, I believe that it is the least you can do. For what it is worth, I acknowledge that like every other employee, I am not perfect and I am sure that there are things I can do to improve. I will do my part to address deficiencies in my work. I want to reach my potential and am willing to not only listen to constructive criticism, but be proactive about improving where I can.

- If there is issue with the substantive nature of my work, I am asking for the fourth time to be included in key meetings so I may be better equipped to quote members or include important legislative details in my writing. Excluding me from these meetings impairs my ability to effectively communicate senator thoughts, ideas, and information.
- It is unfortunate our weekly media meetings ceased in the month of April as that was the only means for me to gain information and get feedback. During those meetings there was never a mention of any alleged deficiency in my work or what improvements needed to

be made. During the month of February, I was told by Ed that Tracie had an interest in writing and that she would be editing my work. None of the edits she made to my work were ever discussed but I was given the directive they were to go out with the changes she made. There was never an opportunity for me to make another attempt at the corrected versions or request to remove specific words or phrases. In fact there has been more than one occasion where I have inquired about a press release I wrote and had my laptop taken from me and used to make corrections rather than asking me to make another attempt at writing a release that was more in-line with what was requested of me, or working collaboratively to suggest revisions or changes.

- I want to be a productive member of the Senate Republican Caucus team and have gone so far as coming into the office at 10:00 p.m. recently in order to rectify an oversight. I have always taken pride in my work with no formal complaint in my five years as Communications Director. I have always had good performance reviews, so you can imagine my surprise in the timing of this sudden change in evaluation of my work product.
- Given the sudden change, and what I believe to be an obvious pretextual basis for these negative comments, I am left to speculate what this is really about. I'm left with only one conclusion: my complaints about the boys' club atmosphere in the Iowa Senate

Republican Caucus. The failure to adopt meaningful policies regarding sexual harassment, among other things, and the continuously crude and hostile work environment I am forced to tolerate each and every day is what this is about. We have no real policy while senators and staff regularly and publically talk about women as objects, their body parts as if detached from their bodies leaves me wondering what it will require for this environment to be cleaned up.

- Will enacting policies be enough? It occurs to me that will just be the start. In sum, I believe that while constructive criticism is fair, the timing and the nature of the criticisms leveled against me suggest it really isn't about my work but about my complaints. While I am willing to address ways in which my work needs improvement, I am also requesting a thorough investigation regarding the sexually hostile work environment that exists here. I specifically request that policies are adopted and training follow. As people who work at doing the people's business and writing and passing laws, we can do a lot better. No private sector workplace would tolerate the kind of environment that currently exists here. I am doing this now not just because the criticisms of my work are unfair but because this environment must change. Please let me know how I can help make that happen and what you plan to do to address these concerns. If there isn't an investigation and

meaningful change, I am willing to take these issues to the next level.

- I appreciate your prompt response to these issues.

68. Anderson handed Johansen the memo at 8:30 a.m. on May 17, 2013.

69. At 3:30 p.m. On May 17th, Johansen told Anderson to stick around, that he needed to speak with her at 4:00 p.m. He then sent everyone else home.

70. At the meeting Sen. Dix was present while Johansen told Anderson that she could resign with a letter of recommendation as well as vacation and sick pay or she would be fired.

71. Anderson told the Senator and her boss that she would not resign.

72. Johansen then told Anderson that he had the authority from Majority Leader Gronstal to terminate her immediately, that she should hand in her badge and collect her things.

V. CAUSE OF ACTION
SEX DISCRIMINATION, SEXUAL HARASSMENT, AND RETALIATION IN VIOLATION OF THE IOWA CIVIL RIGHTS ACT, IOWA CODE CHAPTER 216

73. Anderson incorporates by reference paragraphs 1 through 72 as fully alleged herein.

74. Under the provisions of the Iowa Civil Rights Act, it is unlawful for an employer to discriminate against an employee on the basis of his or her sex, either by engaging in disparate treatment of employees based upon their sex or by creating a sexually hostile workplace.

75. Under the provisions of the Iowa Civil Rights Act, it is unlawful for an employer to retaliate against an employee because he or she has engaged in protected activity under the Iowa Civil Rights Act.

76. Plaintiff suffered adverse employment action when she and other female employees were subjected to disparate treatment and a sexually hostile work environment as alleged in more detail above.

77. Plaintiff suffered other adverse employment action when she was fired for engaging in activity protected by the Iowa Civil Rights Act, namely, for being subjected to sex discrimination in the form of disparate treatment and a sexually hostile work environment.

78. A causal connection exists between Plaintiff's sex, her engaging in protected activity, and the adverse employment action.

79. As a proximate result of Defendants' actions, as outlined above, Plaintiff has in the past and will in the future suffer mental and emotional harm, anguish, humiliation, embarrassment, loss of dignity, lost wages and benefits, and lost earning capacity.

80. Anderson requests relief as set forth in more detail below.

VI. RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment and seeks the following relief:

A. An adjudication that Plaintiff's discharge from employment, as set forth above, was an unfair and/or discriminatory practice within the meaning of Iowa Code § 216.6 (2013);

B. An award of back pay and benefits pursuant to Iowa Code §§ 216.16(5) and 216.15(8) (2013);

C. An adjudication that reinstatement is not appropriate and in lieu thereof an award of reasonable front pay and benefits pursuant to Iowa Code §§ 216.16(5) and 216.15(8) (2013);

D. An award of compensatory damages, including emotional pain, suffering, inconvenience and mental anguish pursuant to Iowa Code § 216.16(5) (2013);

E. An award of pre-judgment interest as provided by law;

F. An award of offset, as an additional appropriate remedy pursuant to the Iowa Civil Rights Act for any and all income taxes due from her on account of the other damages and/or recovery awards herein;

G. An adjudication that Plaintiff is entitled to equitable relief in the form of orders and injunctive relief requiring Defendants to do the following:

- (i) Provide training to supervisory employees regarding how to effectively avoid discrimination in employment on the basis of sexual orientation, and to report to the court once every six months for a period of three years on the training provided and on its effectiveness;
- (ii) Require that all disciplinary decisions regarding employees employed by Defendants in Iowa be reviewed by an independent EEO agency for compliance with EEO laws and regulations prior to implementation;
- (iii) Monitor the environment in workplaces operated by Defendant in Iowa to assure that employees are not being treated unfairly based on sexual orientation, sex and/or gender, and report annually to the court for a period of three years on its monitoring; and

- (iv) Test and evaluate supervisory employees working for Defendants in Iowa to assure that they do not exhibit or act upon bias against women or bigoted attitudes and opinions, do not tolerate disparate treatment based on sexual orientation, sex and/or gender by their subordinates, and report annually for a period of three years on the testing and evaluating.

H. An adjudication that Plaintiff is entitled to reasonable attorney fees pursuant to Iowa Code § 216.16(5) (2013), as well as interest allowed by law and the costs of this action; and

I. Award such other and additional relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Michael J. Carroll

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