

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>KIRSTEN ANDERSON, Plaintiff, vs. THE STATE OF IOWA, THE IOWA SENATE, AND THE IOWA SENATE REPUBLICAN CAUCUS, Defendants.</p>	<p>CASE NO. LACL131321 PLAINTIFF'S MOTION FOR POST- JUDGMENT RELIEF</p>
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COMES NOW, the Plaintiff and for her Motion for Post-Judgment Relief, states:

1. On July 18, 2017, a jury of Iowans in Polk County, Des Moines, Iowa, returned a verdict in favor of the Plaintiff in the amounts of \$1,400,000 for past emotional distress and \$795,000 for future emotional distress for a total verdict of \$2,195,000.

2. Pursuant to Iowa Code §216.16(6), the district court has the authority to grant any relief the statute authorizes the Iowa Civil Rights Commission (“the Commission”) to exercise under the Iowa Civil Rights Act (ICRA).

3. The ongoing illegal conduct that was exposed through Plaintiff’s lawsuit has not, to date, been remedied. It is apparent that such conduct is beyond the capacity and capability of current Senate Republican Caucus members to supervise and correct.

4. Thus, this activity requires this court's attention and supervision, and Plaintiff requests that this court not only retain jurisdiction, but that it order certain constructive, remedial measures, as further specified below, for a period of no less than five (5) years.

5. As an initial matter, the Commission's broad remedial authority is set forth in Iowa Code §216.15(9):

If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discriminatory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

- a. For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:
 - (1) Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.
 - (2) Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.
 - (3) Admission of individuals to a public accommodation or an educational institution.
 - (4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.
 - (5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.
 - (6) Reporting as to the manner of compliance.

- (7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.
- (8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.
- (9) For an unfair or discriminatory practice relating to wage discrimination pursuant to section 216.6A, payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to court costs, reasonable attorney fees, and either of the following:
 - (a) An amount equal to two times the wage differential paid to another employee compared to the complainant for the period of time for which the complainant has been discriminated against.
 - (b) In instances of willful violation, an amount equal to three times the wage differential paid to another employee as compared to the complainant for the period of time for which the complainant has been discriminated against.

6. In this case, the jury's determination was based on substantial and detailed evidence of a hostile and discriminatory work environment testified about at length, by multiple witnesses, and in detail regarding specific examples of such ongoing behavior. That environment was not new, but had been in place as long as the longest-working witness could remember.

7. Indeed, Plaintiff Kirsten Anderson testified to an environment that existed from the date she began employment with the Senate (Republican Caucus Staff Office), such environment, including, but not being limited to: pornography on government computers, referring to women as "cunts," leering at women, ogling women, "rating" women, talking about women's bodies, talk of women's breasts, constant talk of sex ("tickle pickles"/"nooners," etc.), constant talk regarding people's sex lives, discussion of women's sexual

past/preferences, and derogatory slang regarding African-Americans, gays, and lesbians.

8. On several occasions, the conduct was so troublesome that Anderson felt she had to complain to her bosses over the objection of her trusted colleague, Pam Dugdale.

9. Dugdale testified that the culture was so saturated that she felt there was nothing she could do, that it was not until 2010 when Anderson insisted they go to their boss with information regarding the persistent use of the “c” word, that she relented. Even after doing so, Dugdale feared retaliation from the “boys club” and testified to her continued fear of reprisal.

10. In addition to all of that, the environment subjected female employees to regular exposure to sitting Senators engaging in similar behavior, on the Senate floor no less, back-benching and leering at and ogling women, talking about and joking about female lobbyists or even female, high-school-aged pages. This conduct contributed to an environment that permitted, even encouraged, the ugliest kind of behavior.

11. Dugdale, the longest serving current member of the caucus staff, corroborated Anderson’s account and added her own examples of incredibly juvenile, boorish, and illegal workplace conduct that had persisted throughout her career. That conduct included, on her first day of work, someone placing on her computer screen-saver, a picture of a naked woman jumping up and down on a trampoline to the tune of “Jingle Bells.”

12. Dugdale testified that Anderson's account was true, and she gave further examples of the testosterone gauntlet that the women working in the Iowa Senate were forced to endure on an-ongoing basis. For example, Dugdale testified about a sitting Senator (one-time Minority Leader Paul McKinley) looking Dugdale up and down (at her chest) and commenting "nice sweater," and confirmed that a sitting Senator asked her the size of her areolas.

13. Anderson's former co-workers (Tom Ashworth, Josh Bronsink, Russ Trimble, Gannon Hendrick, and Angie Hughes) also corroborated the evidence of Anderson and Dugdale.

14. Importantly, both Ashworth and Dugdale's testimony was the most telling, and each admitted to ongoing fear of retaliation for speaking out. Ashworth referenced being personally retaliated against in the past. But even the other three co-workers, who could be forgiven the very normal concern for their job, corroborated the basic fact of the "locker room" atmosphere; Hughes, another female co-worker of Anderson, specifically admitted the sex talk.

15. We also know that Anderson made five—(2010 (Matthes), 2012 (Hodges), 2012 (Failor), 2012 (Marshall), 2013 (Johansen))—complaints regarding inappropriate and hostile workplace conduct in which Dugdale joined in three.

16. Defendants attempted to hide behind the fact that Ed Failor, Jr., made inquiry into whether the kind of conduct he witnessed was unusual—Anderson and Dugdale told him it was typical. This was after the State tried to

sell the jury on the idea that because Failor asked the two staffers to his office, they actually had not “complained” about inappropriate workplace conduct.

17. Yet other than “talking to” the perpetrator of the conduct occurring on December 13, 2012, Failor, Dix, Staff Director Eric Johansen, and Senate Secretary Marshall did nothing to address a work environment polluted by ugly, juvenile, hostile, and discriminatory behavior. This was the case even though the Governor’s office had requested an investigation. There was no investigation, there was no remediation, and there was not even any change made to the outmoded, incomplete sexual harassment policy until months after Anderson’s termination.

18. The staffers testified that the attitude coming from Johansen, Failor, and Dix was that the problem was solved—nothing to see here, please move along—because Jim Friedrich had stopped his boorish behavior as a result of the “she likes rhythm” incident and cursory follow-up. But they failed to investigate the complaints about the atmosphere in general and the complaints about some of the senators in particular.

19. Moreover, while a biannual harassment training was instituted in the Senate, it was not until months after Anderson’s discharge. Both Dugdale and Failor agreed that the training program is pitiful and ineffective.

20. The Defendants chose not to call one on the person ultimately responsible for the then minority caucus and its staff: then Minority (now Majority) Leader Bill Dix, who approved of the decision to discharge Anderson from employment.

21. Dix's only comments about the evidence, and ultimately the jury's verdict, is telling in several respects:

I am disappointed in the verdict announced this afternoon. Kirsten Anderson was terminated only for her poor work product and absolutely no other reason.

The environment prior to my leadership was lacking in professionalism and appropriate behavior. Any issues that arose during the trial, which had not previously been reported to a supervisor, will be investigated and addressed immediately.

During my leadership of the Senate Republican Caucus, harassment and inappropriate behavior was addressed immediately and effectively and it will continue to be addressed in that manner in the future. The Senate Republican Caucus is now a safe environment and there is no tolerance for any and all types of harassment.

<http://whotv.com/2017/07/18/verdict-reached-in-anderson-sexual-harassment-trial/>

22. Dix's view is an unapologetic rejection of the considered judgment of eight impartial and unbiased Iowans who heard the evidence, explanations, and excuses, and found the State's version of events nothing but empty platitudes. Even if one were to ignore the substantial evidence presented at trial that calls into question the credibility of this press release, there are additional reasons to disbelieve it circulating in the media. (*See Six Hints Iowa Senate Republicans Didn't Fire Kirsten Anderson Over Work Product*, <http://www.bleedingheartland.com/2017/07/25/six-hints-iowa-senate-republicans-didnt-fire-kirsten-anderson-over-work-product/> (attached hereto as Exhibit A).

23. If nothing else, Dix's press release, in light of the trial and jury verdict, demonstrates that further investigation and training within the Senate Republican Caucus is necessary. Leadership cannot be trusted to remedy a problem it refuses to acknowledge exists.

24. This is not a typical case and no simple solution presents itself to the problems Anderson's trial cast a spotlight on. Most governmental employers have robust human resource departments, with employees trained and experienced in the workplace investigations and who are able to provide supervisors with objective advice on how to best handle tough employment situations like sexual harassment investigations.

25. Here, the legislature does not have a robust human resources department. Instead, the legislature ostensibly relies on individuals like the Secretary of the Senate to investigate complaints, which, as seen from trial, failed to offer Anderson any protection. Even with the best of intent, if that were the case, the State has not offered its resources to the Senate Republican Caucus to address ongoing, patent wrongs. If this lawsuit must be the impetus for a reallocation of resources, then so be it.

26. Therefore, it is up to the court to make sure not just that there is accountability for the damage done but also to protect other innocent people, employees, guests of the Senate, lobbyists, colleagues, and members of the staff office from illegal and hostile conduct but also from retaliation for standing up to the kind of behavior which was the subject of a lot of testimony in this case.

27. Therefore, and based on all of the foregoing, Plaintiff Kirsten Anderson specifically requests the following equitable relief as part of the court's equitable powers and jurisdiction following the trial and jury verdict in this case.

- a. The court order the State Senate Republic Caucus, both sitting senators, and staff, to immediately cease and desist all harassing, discriminatory, and retaliatory behavior that is based on sex, race, national origin, sexual orientation, or any other protected basis;
- b. The court order the hiring and retention of an outside consultant qualified and recognized in the field of investigating harassment, retaliation, and claims of discrimination who shall conduct a full and complete investigation of all complaints and issues raised in this lawsuit and the trial of this matter and report their conclusions to the court and the panel discussed in paragraph (g) below.
- c. The court order the hiring and retention of an outside consultant qualified to assist and recognized in the field of studying dysfunctional and hostile workplaces and who is able to identify the sources underlying the kind of behavior leading to the judgment in this case, including but not limited to, sexually hostile and discriminatory workplaces, and who can provide his or her feedback and recommendations to the panel discussed in paragraph (g) below.
- d. The court order the hiring and retention of an outside consultant qualified to assist and recognized in the field of creating, drafting, and adopting of policies intended to help employers maintain safe, discrimination-free, harassment-free, and retaliation-free workplaces, for the purposes of evaluating the current policy and drafting and adopting changes to the current policy.
- e. The court order the hiring and retention of an outside consultant qualified to assist and recognized in the field of designing and implementing a training program based on well-drafted policies in place to protect employees from harassment, discrimination, and retaliation. (Any such consultant must be the kind of qualified expert who will be

able to design and implement a training program that men will not treat as fraternity jokes).

- f. The court order the hiring and retention of an outside consultant qualified and recognized in the field of the training and protection of employees from retaliation for engaging in protected activity. Such a consultant should be given the mandate of training supervisory staff why such policies are vital, and the kinds of policies that can be adopted to provide such protection.
- g. The court order the appointment of a panel of five individuals in the community who have no interest in the litigation but who have expertise in fields such as human resources, industrial psychology, psychology, and/or discrimination law who will advise the court as the court deems necessary to carry out the functions of the equitable relief. The panel shall be consulted on all aspects of the court's order on equitable relief for the purposes of giving the court guidance on the process the court requires the State to follow.
- h. That the court maintain jurisdiction of this matter for a period of five (5) years for these purposes, with the power not only to appoint the panel, but to mandate regular reports from the consultants the court approves as well as regular reporting by the Iowa Senate and also the Republican Caucus regarding how each is carrying out and meeting the objectives set out for them by the court, the consultants, based on their findings, and based on the recommendations of the panel referred to in paragraph (f).
- i. The court order that no adverse action may be taken against any current employee of the Senate who testified in the case or who supports on an ongoing basis the need for change.
- j. The court order the Iowa Senate Republican Caucus shall post a copy of the Court's order on equitable relief on the first page, prominently displayed, on the Caucus' main webpage, and leave it so posted for as long as this Court maintains jurisdiction of the equitable-relief order.

28. Plaintiff Kirsten Anderson specifically requests this relief as part of the court's delegated authority under the Iowa Civil Rights Act, all to be ordered at the expense of the State of Iowa.

WHEREFORE, Plaintiff Kirsten Anderson requests a hearing date be set on this motion, that the court order the relief requested in more detail above, and for any and all other relief this Court deems just and equitable.

Respectfully submitted,

/s/ Michael J. Carroll
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