

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
IN TOPEKA, KS**

RYAN FELIX,)	
)	
Plaintiff,)	
)	Case No:
v.)	
)	
)	
)	VERIFIED COMPLAINT
BOARD OF COUNTY COMMISSIONERS)	
OF DICKINSON COUNTY KANSAS;)	
AND)	
SHERIFF GARETH HOFFMAN, IN HIS)	
OFFICIAL AND INDIVIDUAL CAPACITY)	
)	
Defendant.)	

Plaintiff, by and through counsel, and for his Complaint against the Defendants, hereby states as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff is a citizen and resident of Shawnee County, Kansas.

2. That, upon information and belief, the defendant BOARD OF COUNTY COMMISSIONERS OF DICKINSON COUNTY KANSAS (“Dickinson County” or “defendant”), is a governmental entity and/or municipal

corporation doing business and maintaining offices and agents in the County of Dickinson, Kansas and the Dickinson County Sheriff's Department is part of said entity.

3. That, upon information and belief, the defendant Sheriff Gareth Hoffman ("Hoffman" or "defendant") is the Sheriff of the defendant Dickinson County and is a citizen and resident of Dickinson County, Kansas. Defendant Hoffman is being sued both in his individual and in his official capacity.
4. That this court has federal question jurisdiction pursuant to 42 U.S.C. § 2000e-2, 42 U.S.C. §2000e-5 ("Title VII"), 42 U.S.C. §1983, 42 U.S.C § 1988 and 28 U.S.C. §1331.
5. There are additional issues arising out of religious discrimination in violation of Kansas law, particularly, under the Kansas Act Against Discrimination, K.S.A. 44-1009(a)(1).
6. This Court has authority to issue the requested damages under 28 U.S.C. §1343(3).
7. This Court has authority to award attorneys' fees under 42 U.S.C. § 1988.
8. That venue for all causes of action stated herein lies in the District of Kansas pursuant to 28 U.S.C. §1391(b), the parties reside and do business in this district, and this claim arose in the District of Kansas.

CONDITIONS PRECEDENT

9. That plaintiff has exhausted all administrative remedies and conditions

precedent, including timeliness, deferral and all other jurisdictional requirements necessary for the maintenance of his Title VII action, all of which are more fully described below. Moreover, at all relevant times as defined by Title VII, defendant Dickinson County employed fifteen (15) or more employees. As such, defendant Dickinson County is an “employer” as defined by Title VII and otherwise is subject to that Act.

10. On August 7, 2015 the plaintiff sent the Defendants a notice of claim pursuant to and in satisfaction of the requirements in K.S.A. 12-105(b).
11. That on or about August 27, 2015, and as result of defendants’ discriminatory conduct, all of which is more fully described below, plaintiff filed a complaint with the Kansas Human Rights Commission (KHRC), a state agency which is a Fair Employment Practice agency, which works in partnership with the Equal Employment Opportunity Commission (“EEOC”) alleging discrimination based upon the Plaintiff’s religious beliefs.
12. After the KHRC reviewed the plaintiff’s filed case, the plaintiff timely requested an EEOC review of the agency action.
13. The plaintiff received his “Notice of Right to Sue” from the EEOC on September 28, 2016 pursuant to the complaint filed with the KHRC described in Paragraph 11 of this Complaint.

14. That plaintiff has timely filed the foregoing action within ninety (90) days of the date on which he received his Notice of Right to Sue described above in Paragraph 13.

FACTS

15. That plaintiff hereby repeats and re-alleges each and every allegation contained in Paragraphs 1 through 14 hereinabove as fully as if set forth verbatim.
16. That on or about May 27, 2014 defendants hired plaintiff as a deputy for Dickinson County Sheriff's office.
17. The plaintiff was an exemplary deputy and he never received a complaint regarding bias or discrimination for race or sexual orientation.
18. The plaintiff deeply valued his career as a deputy as it had been his life's aspiration to work in law enforcement.
19. The plaintiff is a protestant Christian and attends church at Lion and Lamb Church in Topeka, KS. While living in Dickinson County he attended church at Community Bible Church, in Abilene, KS.
20. The plaintiff holds religious belief and conviction that marriage is define by God as between one man and one woman. This belief is taught by the churches he attends and has attended.
21. The plaintiff holds the political opinion that the Confederate flag in and of itself is not representative of hate and bigotry, but a historical symbol of the American

South and a symbol of state's rights.

22. During the summer of 2015 there was a national debate regarding whether the State of South Carolina should remove the Confederate flag from its state capital.
23. The plaintiff holds a religious belief that discrimination of any kind is immoral and should not be tolerated in his professional or personal life.
24. In response to the national debate regarding the issue, the Plaintiff posted several online posts on "Facebook" expressing his view that the Confederate flag is not in itself racist.
25. On June 26, 2015 the Supreme Court issued its landmark opinion in *Obergefell v. Hodges*, 576 US _ 2015, which legalized homosexual marriage in the United States.
26. On the same day, the plaintiff posted on his Facebook account an article regarding the decision and his own commentary expressing that he disagreed with the decision.
27. The plaintiff's expressed disagreement with the *Obergefell* decision is based purely on his religious belief that marriage is between one man and one woman.
28. On June 26, 2015 his shift partner, Brandon Hurt, called him and told him he should delete the posts regarding the Obergefell decision and his posts regarding his opinion that the Confederate Flag is not racist.
29. Shortly after his conversation with his shift partner regarding the removal of his posts, the plaintiff deleted his Facebook posts regarding the Confederate Flag and removed his name from the Facebook account which he shared with his wife.

30. The plaintiff chose not to delete posts regarding the *Obergefell* decision because he felt that this was his religious belief and would violate his conscience to remove the posts.
31. The plaintiff's privacy settings on "Facebook" were set that so that only individuals who were his "friends" would see his aforementioned posts.
32. The general public would not be able to see the aforementioned "Facebook" posts, and no one would be able to gain access to see the posts unless the Plaintiff allowed it by adding them as a "friend."
33. The plaintiff's shift partner, Brandon Hurt, asked him if he had taken down the posts regarding the Confederate Flag and the plaintiff told him that he did.
34. Brandon Hurt also told him that the Sheriff was displeased with the plaintiff's aforementioned Facebook postings, and that hopefully taking them down would save the plaintiff's job.
35. On June 30, 2016 the plaintiff received a text on his work phone that he was to report to deputy's meeting on July 1, 2016 at 1600 hours. The Plaintiff replied, "10-4" to this message.
36. On July 1, 2016 the Sheriff, Gareth Hoffman, called the plaintiff into his office where he was given a letter explaining that he was terminated for expressing his religious views and his views on the Confederate Flag through his Facebook posts.
37. The termination letter calls the plaintiff's views expressed on Facebook as radical.

38. The termination letter states, “we do not condone nor do we support your radical thinking on the above subject matter.”
39. The termination letter did not reference any instance where the plaintiff had been accused of bias against any minority group.
40. The termination letter states that the expression of the plaintiff’s personal views are in violation of the Dickinson County Sheriff’s social media policy.
41. The Dickinson County Sheriff’s department social media policy as applied to the plaintiff and facially violates the First and Fourteenth Amendment of the United States Constitution.
42. The Dickson County Sheriff’s social media policy contains subjective provisions which prohibit any social media posts which “reflect negatively on their position as peace officer/employee.”
43. The termination letter suggests that the perceived “undertones” of the plaintiff’s social media or Facebook posts have no place in law enforcement.
44. The termination letter shows that the conduct of the defendants in terminating the plaintiff was intentional. The defendants knew the plaintiff was engaging in protected religious and political speech on matters of public concern and terminated him in violation of Title VII, the First Amendment and 42 U.S.C. §1983.
45. The Plaintiff has removed his name from the Facebook account to which the aforementioned posts were made.

46. The Plaintiff, prior to the events described in this complaint, has never been accused nor has he ever expressed any bias against minorities of any kind.
47. The Plaintiff believes that racism and homophobia are wrong.
48. The Plaintiff believes that racism and homophobia are wrong because his Christian religious beliefs tell him that he is to love his neighbor.
49. In 2005, the people of Kansas adopted an amendment to Kansas Constitution which declared it the public policy of the state to consider marriage between one man and one woman by a margin of 69.95%. Meaning in 2005, 69.95% of Kansas voters shared the plaintiff's view of marriage as between one man and one woman. In Dickinson County the margin of voters who supported the same sex marriage ban was slightly higher at 71.71%.

ALLEGATIONS OF LAW

50. The government cannot discriminate against or punish employees because of their religious beliefs or speech.
51. Defendants terminated the Plaintiff, in substantial part, for holding historical Christian beliefs about marriage making those views known via an aforementioned Facebook post on June 26th 2015.
52. Defendant terminated the Plaintiff, in substantial part, for protected political speech expressing an opinion on a matter of public concern which would not interfere with his duties at the Dickinson County Sheriff's Department, namely he expressed his

view the Confederate Flag was not in itself racist, but a symbol of Southern heritage and states rights.

53. Public employees do not renounce their citizenship when they accept government employment.
54. Public employers may not condition government employment on the relinquishment of constitutional rights.
55. Speech by citizens on matters of public concern lies at the heart of the First Amendment.
56. Government employers cannot extend their reach to censor employees' religious expression that is unrelated to their work.
57. The plaintiff has the constitutional right to believe as he will and to act according to his religious beliefs as well as the freedom to express his religious and political beliefs.
58. Government employees have a First Amendment right to express religious opinions at work in a non-coercive manner.
59. Justice Kennedy wrote in the *Obergefell v. Hodges* decision,

“Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe

allowing same-sex marriage is proper or indeed essential, whether as a matter of religious conviction or secular belief, may engage those who disagree with their view in an open and searching debate.” *Obergefell v. Hodges*, 135 S.Ct. 2584, 2607 (2015).

60. Defendants terminated the Plaintiff for exercising his First Amendment rights.
61. All of the acts of the Defendants, their officers, agents, employees, and servants, were executed and are continuing to be executed by Defendants under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of Dickinson County and the State of Kansas.
62. The Plaintiff is suffering economic injury and irreparable harm from the conduct of the Defendants.
63. Unless the Defendants’ policies and practices challenged herein are enjoined, the Plaintiff will continue to suffer economic and irreparable injury.

**FIRST CAUSE OF ACTION
Violation of Title VII Religious Discrimination
(TERMINATION)**

64. That plaintiff hereby repeats and re-alleges each and every allegation contained in Paragraphs 1 through 63 hereinabove as fully as if set forth verbatim.
65. That at all relevant times as defined by Title VII, 42 U.S.C. § 2000e *et seq.*, said defendant employed fifteen (15) or more employees and, thus, is covered by and otherwise subject to Title VII.
66. That plaintiff is a Christian who holds a genuine religious belief that marriage is between one man and one woman.

67. That at all times plaintiff performed his job duties at the Dickinson County Sheriff's department in a manner that met said defendant's legitimate expectations.
68. That said defendant terminated plaintiff.
69. That defendant terminated plaintiff under circumstances that constitutes religious discrimination because the Defendants fired him for posts regarding his genuinely held religious beliefs.
70. That defendant terminated plaintiff because of plaintiff's religious beliefs and, therefore, defendant has violated Title VII.
71. That as a result of the above, plaintiff has suffered damages in the form of lost back and future wages, income and benefits, expenses associated with finding other work, severe psychological harm, emotional distress, anxiety, depression, pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, loss to professional standing, character and reputation, physical and personal injuries, and further seeks attorney's fees and costs and prejudgment interest.

SECOND CAUSE OF ACTION
First Amendment Right to Freedom of
Speech Retaliation
(42 U.S.C. §1983)

72. That plaintiff hereby repeats and re-alleges each and every allegation contained in

Paragraphs 1 through 71 hereinabove as fully as if set forth verbatim.

73. The Free Speech Clause of the First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment, protects the right of government employees to speak as citizens on matters of public concern.
74. The Free Speech Clause of the First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment, also protects the right of government employees to speak as citizens on matters unrelated to their work.
75. That plaintiff engaged in speech or protected activity outside of work in his personal time which related to matters of public concern:
 - A. Plaintiff posted photos on his Facebook account and statements regarding his political belief that the Confederate flag is not racist, but a symbol of Southern heritage and state's rights. Paragraph's 22 and 24 of this complaint support the allegation that the statement was regarding a matter of public concern.
 - B. Plaintiff posted a statement on his Facebook page expressing disappointment and disagreement with the Supreme Court Decision, *Obergefell v. Hodges*, which overturned Kansas's gay marriage ban. Paragraph 25 of this complaint supports the allegation that the statement was regarding a matter of public concern.

76. The plaintiff's aforementioned Facebook posts, were political and religious expression, and were completely unrelated to his government employment.
77. The plaintiff's religious and political expression did not threaten the Defendants' ability to administer public services and was not likely to do so. Paragraphs 29, 31, 32 and 49 of this complaint support the allegation that the plaintiff's expressions would not threaten the Defendant's ability to administer public services.
78. The plaintiff's political and religious expression did not interfere with the Sheriff's Department's internal operations or with internal order and discipline and was not likely to do so. Paragraphs 29, 31, 32 and 49 of this complaint support this allegation.
79. That plaintiff's interest in his First Amendment expression outweighed defendants' interest in the efficient operation of the workplace. Moreover, plaintiff's exercise of his free speech rights did not disrupt or interfere with the operation of the workplace at Dickinson County Sheriff's Department. Paragraphs 29, 31, 32 and 49 of this complaint support this allegation.
80. That defendants unlawfully terminated and retaliated against the plaintiff for engaging in free and protected speech. Specifically, defendants terminated plaintiff because plaintiff exercised his First Amendment rights guaranteed to him by the Kansas and United States Constitutions.
81. The plaintiff at all times performed his duties at work in a satisfactory manner.

82. The Plaintiff's aforementioned protected political and religious expressions were the sole reason Defendants terminated his employment as no other reasons were given for his termination in the termination letter.
83. The plaintiff's religious expression regarding the Supreme Court marriage decision was a substantial reason for the plaintiff's termination.
84. The plaintiff's protected political expression regarding the Confederate Flag was a substantial reason for the plaintiff's termination.
85. Defendants would not have terminated the plaintiff's employment absent the expression of his protected political and religious views.
86. The plaintiff's termination was because of protected religious expression concerning his sincerely held religious beliefs unrelated to his job, Defendants must overcome strict scrutiny to justify censoring his speech.
87. Pursuant to their policies, practices and actions, Defendants discharged the plaintiff because he expressed his religious beliefs and political viewpoints in his private capacity as a citizen on matters of public concern. These matters of public concern were the Supreme Court Decision in *Obergefell v. Hodges* and the national debate concerning the use of the Confederate Flag.
88. That in so terminating plaintiff, defendants have intentionally and willfully deprived plaintiff of his Constitutional First Amendment right to freely express

his beliefs about issues of public concern that are unrelated to his job, and thereby violated 42 U.S.C. §1983.

89. Defendants' termination of the plaintiff's employment based on his protected religious and political expression which were written and posted outside of work, unrelated to work, and discussed issues of public concern, violates the Free Speech Clause of the First Amendment, as incorporated against the States by the Fourteenth Amendment, both facially and as-applied to the plaintiff.
90. That defendant Dickinson County and defendant Hoffman are liable in their official capacities as an official policy or custom existed that was attributable to defendants; said policy or custom proximately and directly caused the deprivation of plaintiff's Constitutional rights, freedom of speech and freedom of the free exercise of religion; and, defendants acted with deliberate indifference in violating plaintiff's rights.
91. That moreover, defendant Hoffman is liable in his individual capacities as the First Amendment rights of plaintiff, which defendants violated, were clearly established rights; defendant Hoffman made the decision to terminate plaintiff (and had personal involvement in said decision); said defendants caused the deprivation of plaintiff's rights; and, said defendants did so acting with deliberate indifference to plaintiff's protected rights.

92. That as a result of the above, plaintiff has suffered damages in the form of lost back and future wages, income and benefits, expenses associated with finding other work, severe psychological harm, emotional distress, anxiety, depression, pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, loss to professional standing, character and reputation, physical and personal injuries, punitive damages (against the individual defendants in their individual capacities), and further seeks attorney's fees and costs and prejudgment interest.
93. That in acting in his individual capacity, defendant Hoffman acted intentionally, willfully, recklessly, and with callous indifference to plaintiff's federally protected rights and, therefore, plaintiff is entitled to recover punitive damages from said defendant.

THIRD CAUSE OF ACTION

First Amendment Right to Freedom of Speech: Viewpoint Discrimination, Overbreadth, and Unbridled Discretion, and Unconstitutional Conditions (42 .S.C. § 1983)

94. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-93 of this Verified Complaint.
95. The Free Speech Clause of the First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment, prohibits the government from

engaging in viewpoint discrimination.

96. Viewpoint based restrictions on speech are presumptively unconstitutional and are subject to strict scrutiny even where citizens do not possess a constitutional right to speak in the first place.
97. Defendants have allowed numerous employees similarly situated to the plaintiff to express their beliefs and viewpoints in favor of and approving of same-sex marriage, homosexual conduct and disapproving the use of the Confederate Flag.
98. But Defendants terminated Plaintiff because of his expression of political and religious beliefs and religious viewpoint contrary to same-sex marriage and the morality of homosexual conduct and his political belief that the Confederate Flag is not in itself racist, but a symbol or southern heritage and state's rights.
99. By terminating the plaintiff based on his expression of political and religious beliefs against same-sex marriage and the morality of homosexual conduct and allowing other, similarly-situated employees to express opposite viewpoints Defendants have, by policy and practice, treated the plaintiff's viewpoint differently and engaged in viewpoint discrimination.
100. Defendants have no rational, let alone compelling, reason for prohibiting the plaintiff's expression of his political viewpoints on the Confederate Flag or religious viewpoint on marriage and sexuality, which is shared by the majority of Kansans.

101. The Free Speech Clause of the First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment, also forbids the government from imposing overbroad restrictions on protected speech.
102. To the extent, Defendants' policies and practice forbid employees from engaging in speech on matters of public concern unrelated to their jobs that do not and will not likely disrupt the Defendant's provision of public services or internal operations, they are substantially overbroad and burden a vast array of expression protected by the First Amendment.
103. The substantial overbreadth of Defendants' policy and practice chills, deters, and restricts the plaintiff's speech and that of other employees of the Defendant not before the Court who wish to engage in expression about matters of public concern that are unrelated to their jobs.
104. Indeed, after the plaintiff's termination, the defendant's employees who share the plaintiff's Christian views are likely to avoid expressing their religious beliefs about marriage and sexuality for fear of losing their livelihood, as are other employees of the Defendants who hold viewpoints on subjects unrelated to their jobs with which Defendants disagree. Additionally, the defendant's employees are similarly likely to avoid expressing any political views on subjects unrelated to their jobs with which Defendants disagree.
105. The plaintiff's aforementioned political and religious expression made on Facebook

did not relate to his government employment but was posted outside of work.

106. The decision whether the Plaintiff and other employees may engage in protected speech is left entirely to the whim of Defendants and other County officials.
107. Defendants' policies and practice violate the Free Speech Clause of the First Amendment, as incorporated against the States by the Fourteenth Amendment.
108. The unconstitutional conditions doctrine also prohibits the government from conditioning a benefit, such as government employment, on the relinquishment of First Amendment rights.
109. The plaintiff and other Dickinson County Sheriff employees retain the First Amendment right to believe as they will on religious matters and Political matter to act in accordance with those beliefs, including by expressing them publicly on issues unrelated to their employment.

WHEREFORE, Plaintiff respectfully prays the court grant the equitable and legal relief set forth in the prayer for relief.

FOURTH CAUSE OF ACTION
First Amendment Right to the Free Exercise of Religion and No Religious
Tests Clause of Art. VI, ¶ 3 of the Constitution
(42.S.C. § 1983)

110. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-109 of this Verified Complaint.
111. The Free Exercise Clause of the First Amendment, incorporated and made applicable

to the states by the Fourteenth Amendment, protects citizens' freedom to believe as they will and to make those beliefs publicly known.

112. A fundamental purpose of the Free Exercise Clause is to render man's relation to his God no concern of the state such that citizens may believe and profess whatever religious doctrines they desire.
113. Under the Free Exercise Clause, no person can be punished by the government for entertaining or professing religious beliefs.
114. Government action based upon disagreement with religious tenets or practices violates the Free Exercise Clause.
115. But Defendants, pursuant to their policy and practice explicitly and implicitly terminated the plaintiff based on his religious views on marriage which were expressed in his aforementioned Facebook posts.
116. The plaintiff's religious faith requires that he believe, profess, and teach others about historical Christian teachings regarding the one-man-one- woman nature of marriage and the sinfulness of sexual conduct outside of that union.
117. Defendants by their policy and practice terminated his employment because he expressed the plaintiff's sincerely held religious beliefs regarding marriage and sexuality when he posted his disagreement with the *Obergefell v. Hodges* Supreme Court Decision.
118. Defendants thus punished the plaintiff for entertaining and professing religious

beliefs with which they disagreed.

119. The termination letter noted the Defendants' disagreement with the plaintiff's religious beliefs.
120. But the Free Exercise Clause forbids government from penalizing or discriminating against individuals or groups because they hold religious views abhorrent to the authorities.
121. Moreover, the Free Exercise Clause forbids government from forcing citizens to choose between their religion and forfeiting benefits, such as government employment, and abandoning the precepts of their religion in order to maintain their jobs.
122. Imposing such a choice is equivalent to forcing a citizen to pay a fine for engaging in Sunday worship.
123. But Defendants by their policy and practice forced the plaintiff to choose between fulfilling his religious obligations and forfeiting his government employment or abandoning the teachings of his Christian faith in order to maintain his position.
124. Defendants have, in effect, instituted by policy and practice, under color of state law, the equivalent of a religious test for public employment that excludes those who hold and profess in a public manner historical Christian beliefs about marriage and sexuality that are of public concern.
125. This religious test for the Dickinson County Sheriff's department employment

violates the No Religious Tests Clause of Article VI, ¶ 3 of the Constitution and the Free Exercise Clause of the First Amendment.

126. In addition, the Free Exercise Clause forbids the government from imposing special disabilities based upon a citizen's religious views.
127. Defendants did just that by their policy and practice, which disqualifies those who hold and express historical Christian beliefs about marriage and sexuality from employment.
128. Defendants' policy and practice are not neutral because they expressly target historical Christian beliefs that are counter to same-sex marriage and homosexual conduct and allow officials to arbitrarily decide what religious speech is permitted and what religious speech is proscribed.
129. Defendants' policy and practice as applied are likewise not generally applicable because they do not ban public employees from engaging in private speech unrelated to their employment that is favorable to same-sex marriage and homosexual conduct and because they grant officials unbridled discretion to censor the plaintiff's religious expression while permitting other employees to express their personal views on marriage and sexuality.
130. Defendants have no rational, let alone compelling, reason for terminating the plaintiff for his expression of religious belief.
131. Defendants' policies and practice are not narrowly tailored to advance any legitimate

interests Defendants may possess because Plaintiff's speech does not implicate any legitimate interests Defendants might assert.

132. Defendants' policy and practice, both facially and as applied to the plaintiff, violate the Free Exercise Clause of the First Amendment, as incorporated against the States by the Fourteenth Amendment, by invading his right of conscience and belief, effectively imposing a religious test for public employment that excludes those who hold and express historical Christian beliefs about marriage and sexuality, and restricting the free exercise of his religion in a manner that is not neutral or generally applicable.

WHEREFORE, Plaintiff respectfully prays the court grant the equitable and legal relief set forth in the prayer for relief.

FIFTH CAUSE OF ACTION
Fourteenth Amendment Right to Equal Protection of the Laws (42 U.S.C. § 1983)

133. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-132 of this Verified Complaint.
134. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly-situated persons alike.
135. Religion is an inherently suspect classification under the Equal Protection Clause.
136. The plaintiff as a Christian and member of a Christian church belongs to a protected class.

137. Pursuant to their policies and practice, Defendants allowed employees similarly situated to the plaintiff to express a secular belief and viewpoint favorable to same-sex marriage and homosexual conduct.
138. But pursuant to their policies and practice, Defendants terminated the plaintiff because of his religious belief and viewpoint against same-sex marriage.
139. Defendants thus intentionally discriminated against the plaintiff's religious belief and viewpoint by treating it differently from the speech of other similarly situated employees.
140. When governmental policies and practice infringe upon fundamental rights, discriminatory intent is presumed.
141. Defendants' policies and practice infringe upon the plaintiff's fundamental rights to freedom of speech, freedom of association, and freedom of religion, among other fundamental rights.
142. Defendants have no rational, let alone compelling, reason for targeting the plaintiff's religious speech for disparate treatment.
143. Defendant's policies and practice are not narrowly tailored to advance any legitimate interest the Defendants may possess because the plaintiff's speech does not implicate any legitimate interests Defendants might assert.
144. Defendants' policies and practice violate the Equal Protection Clause of the Fourteenth Amendment both facially and as applied to the plaintiff.

145. Defendants' enactment and enforcement of their policies and practice, under color of state law, which explicitly and implicitly discriminate against the plaintiff on the basis of his religious beliefs and viewpoint deprived him of his clearly established right to equal protection of the laws secured by the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief

SIXTH CAUSE OF ACTION
Fourteenth Amendment Right to Due Process: Vagueness (42 U.S.C. § 1983)

146. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-145 of this Verified Complaint.

147. The Due Process Clause of the Fourteenth Amendment prohibits the government from censoring speech pursuant to vague standards that grant government officials unbridled discretion.

148. Defendants' arbitrary determination of what protected religious expression or political expression violates their policies and practice and what protected religious expression or political expression does not, violates this constitutional prohibition, particularly the Defendants' "Social Media Policy" which was referenced in the letter which terminated the plaintiff.

149. Employees of common intelligence must guess and will differ in their views as to what expression will meet with Defendants' approval and be permitted under their

policies and practice and what expression will not and be banned or punished.

150. Defendants' policies and practice also provide no warning or notice as to what expression will meet with their approval and be permitted and what speech will not and be banned.

151. Instead, Defendants' policies and practice provide them with unbridled discretion to determine when employees may engage in protected religious expression thus subjecting the exercise of the plaintiff's and other employee's fundamental rights to the whim of the defendants.

152. Defendants' policies and practice thus violate the Due Process Clause of the Fourteenth Amendment, both facially and as-applied to the plaintiff, because they provide no binding guidelines prescribing what protected expression defendants may permit or deny.

WHEREFORE, Plaintiff respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief.

SEVENTH CAUSE OF ACTION
Fourteenth Amendment Right to Due Process: Liberty Interest (42 U.S.C. § 1983)

153. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1-152 of this Verified Complaint.

154. The Due Process Clause of the Fourteenth Amendment protects rights that are fundamental or implicit in the concept of ordered liberty, including the right to earn

a livelihood in a common calling, free from unreasonable government interference.

155. The plaintiff has a protected liberty interest in working and earning a living and establishing a home and position in his community.
156. But pursuant to their policies and practice, Defendants irrationally terminated the plaintiff for “radical thinking” despite the fact that he has never discriminated against, nor been accused of discriminating against, anyone on the basis of a protected characteristic, including sexual orientation.
157. Defendants’ groundless suspension and termination of the plaintiff has stigmatized him and irretrievably damaged his reputation in the community.
158. Defendants’ groundless suspension and termination of the plaintiff also rendered it impossible or extremely difficult for him to pursue his common calling by finding and maintaining work in any law enforcement capacity.
159. The Due Process Clause of the Fourteenth Amendment secures the plaintiff against such arbitrary government actions.
160. Defendants have no rational interest, let alone a compelling interest, in terminating the plaintiff in an infamous manner based on his expression of personal religious beliefs about marriage and sexuality.
161. Defendants’ policies and practice thus violate the Due Process Clause of the Fourteenth Amendment because they grossly stigmatized the plaintiff’s reputation in the community and deprived the plaintiff of his right to earn a living as a law

enforcement officer.

WHEREFORE, Plaintiff respectfully prays the Court grant the equitable and legal relief set forth in the prayer for relief

EIGHTH CAUSE OF ACTION
Religious Discrimination in violations of Kansas
State Law

162. That plaintiff hereby repeats and re-alleges each and every allegation contained in Paragraphs 1 through 161 hereinabove as fully as if set forth verbatim.
163. That plaintiff is a Christian who holds a genuine religious belief that marriage is between one man and one woman.
164. That at all times plaintiff performed his job duties at the Dickinson County Sheriff's department in a manner that met said defendant's legitimate expectations.
165. That said defendants terminated plaintiff.
166. That defendants terminated plaintiff under circumstances that constitutes religious discrimination because the Defendants fired him for Facebook posts regarding his genuinely held religious beliefs.
167. That defendant terminated plaintiff because of plaintiff's religious beliefs and, therefore, defendant has violated K.S.A. 44-1009(a)(1).
168. That as a result of the above, plaintiff has suffered damages in the form of lost back and future wages, income and benefits, expenses associated with finding

other work, severe psychological harm, emotional distress, anxiety, depression, pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, loss of professional standing, character and reputation, physical and personal injuries, and further seeks attorney's fees and costs and prejudgment interest.

NINTH CAUSE OF ACTION
Wrongful Termination in Violation of Public
Policy

169. That plaintiff hereby repeats and re-alleges each and every allegation contained in Paragraphs 1 through 168 hereinabove as fully as if set forth verbatim.
170. Kansas courts have adopted a cause of action for wrongful termination when the termination is in conflict with the public policy of Kansas as an exception to "employment at will". *See Coleman v. Safeway Stores Inc.*, 242 Kan. 804, 812-813, (1988).
171. It is the stated public policy of Kansas that marriage ought to be between one man and one woman under Article 5 section 16 of Kansas Constitution.
172. It is a violation of the public policy of Kansas for an employer to discharge a citizen from employment because of religious expression in line with Article 5 section 16 of the Kansas Constitution, political opinions or the exercise of political rights and privileges.
173. That plaintiff expressed a political opinion and/or exercised his political rights

and privileges by posting on his private Facebook page a statement expressing disappointment and disagreement with the *Obergefell* decision.

174. That defendant violated the clear and strong mandate of public policy referred to above in Paragraphs 170-172 by terminating plaintiff from at-will employment because plaintiff expressed his political opinions regarding same sex marriage and because plaintiff exercised his political rights and privileges guaranteed to him by the Kansas and United States Constitution.

175. That as a direct result of the above violations, plaintiff has suffered damages in the form of lost back and future wages, income and benefits, expenses associated with finding other work, severe psychological harm, emotional distress, anxiety, depression, pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, loss of professional standing, character and reputation, physical and personal injuries, and further seeks the costs and disbursements of this action and prejudgment interest.

WHEREFORE, as to plaintiff's nine above stated causes of action plaintiff prays for the following relief against defendants:

- A. For such an amount of actual and special damages as the trier of fact may find (including lost back and future wages, income and benefits, expenses associated with finding other work, severe psychological harm, emotional distress, anxiety,

depression, pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, embarrassment, humiliation, loss of professional standing, character and reputation, and physical and personal injuries);

- B. A permanent injunction requiring Defendants, their agents, employees, and all persons in active concert or participation with them to
 - 1. reinstate the plaintiff to his former position; and
 - 2. stop enforcing their policies and practice of allowing adverse employment actions against the plaintiff and other employees for expressing protected political and religious messages about marriage and sexuality when those messages are about matters of public concern, do not concern their job duties, and do not interfere with the defendant's external or internal operations and are not likely to do so;
- C. The costs and disbursements of this action;
- D. Prejudgment interest on any pecuniary awards provided;
- E. Other equitable relief including back pay and front pay for violating the plaintiff's constitutional rights, nominal damages for violating the plaintiff's constitutional rights and the expungement of the plaintiff's disciplinary record for all matters related to the personal expression of his political and religious beliefs;
- F. Reasonable attorneys' fees, costs, expenses, and other disbursement in this action pursuant to 42 U.S.C. § 1988.
- G. All other relief this Court deems just and equitable.

Respectfully Submitted this 20th Day of December, 2016,

s/Michael J. Patton
MICHAEL J. PATTON
KS # 25015
Attorney for Plaintiff
534 S. Kansas Ave Suite 1120
Topeka, KS 66603
(785) 273-4330
FAX (785) 354-1901
Email: Mike@Joepatton.com

DEMAND FOR JURY TRIAL

COMES NOW, the plaintiff, and demands a trial by jury of twelve individuals in Topeka, Kansas.


Respectfully submitted,

s/Michael J. Patton
MICHAEL J. PATTON

DECLARATION UNDER PENALTY OF PERJURY

I, RYAN FELIX, a citizen of the United States and a resident of the State of Kansas, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of December, 2016, at Topeka, K a n s a s .



RYAN FELIX

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December, 2016, a copy of the foregoing Verified Complaint was filed with the Clerk of the Court using the ECF system. I also certify that the foregoing will be served, along with a copy of the Summons and Complaint, pursuant to Federal and Kansas State Law:

DICKINSON COUNTY
Dickinson County Clerk
109 East First St.
Abilene, KS 67410

Dickinson County Attorney
201 East First St.
Abilene, KS 67410

Gareth Hoffman
DICKINSON COUNTY SHERIFF
Dickinson County Sheriff's Department
109 East First St.
Abilene, KS 67410

With Copies to:

Wendell F. Cowan
Foulston Siefkin LLP
32 Corporate Woods, Suite 600
9225 Indian Creek Parkway
Overland Park, KS 66210-2000
Attorney for Defendants

s/MICHAEL J PATTON
Michael J. Patton
Attorney for Plaintiff