UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Katie Wood *et al.*,

Plaintiffs,

v. No. 4:23-cv-00526-MW-MAF

Florida Department of Education *et al.*,

Defendants.
_____/

PLAINTIFF KATIE WOOD'S RESPONSE IN OPPOSITION TO DEFENDANT SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA'S MOTION TO DISMISS FIRST AMENDED COMPLAINT

Defendant School Board of Hillsborough County, Florida's ("Hillsborough") Motion to Dismiss, Doc. 62, Plaintiff Katie Wood's claims against it in the First Amended Complaint, Doc. 56, takes the extraordinary and legally unsupported position that it is immune from suit for violating federal law if it is following contrary state law. But federal law and the federal constitution are the supreme law of the land. U.S. Const. art. VI cl. 2 (Supremacy Clause). "[A] state law at odds with a valid Act of Congress is no law at all." *Barber ex rel. Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1234 (10th Cir. 2009) (Gorsuch, J. Concurring) (citing

[instead of] … shielding [itself] from it." *Id.* It also argues that it is not liable on Ms. Wood's constitutional claims under 42 U.S.C. § 1983 because its decision to enforce subsection 3 by forbidding Ms. Wood from providing students her pronouns and title was not discretionary under state law and hence does not constitute a municipal policy. But subsection 3 does not require Hillsborough to do so. Instead, subsection 3 requires it only to relay complaints about her failure to comply to the state. Hillsborough is responsible under § 1983 for its discretionary policy decision to proactively enforce the law.[1]

ARGUMENT

I. Hillsborough is liable for violating Title VII and Title IX, even if it does so in compliance with state law.

Hillsborough does not deny Ms. Wood has alleged that it forbade her, unlike teachers whose sex Florida deems to be female, from providing students with the title "Ms." and she/her pronouns. Doc. 62 at 7–8; *see also* Doc. 56 ¶¶ 81–82. Instead, it argues that it was only following a policy set by state law and that even if subsection 3 violates federal law it cannot be sued. Doc. 62 at 7–9. This theory deeply misapprehends what courts do:

> [A]n argument of this stripe reflects a serious misunderstanding. A person aggrieved by the application of a legal rule does not sue the rule

[1] Hillsborough has not joined or raised any of the substantive arguments for dismissal in other Defendants' motion to dismiss and therefore Ms. Wood does not address the merits of her claims here. To the extent those arguments are nonetheless relevant to this motion, Plaintiffs incorporate by reference their opposition to those motions.

maker—Congress, the President, the United States, a state, a state's legislature, the judge who announced the principle of common law. He sues the person whose acts hurt him …. Every day courts consider the

to use her pronouns and title. Courts, including this one, routinely enjoin local governments from following state laws which conflict with federal law. *See*, *e.g.*, *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218, 1291–92 (N.D. Fla. 2022) (enjoining, among others, boards of governors of state universities from enforcing state law).

Indeed, it is *only*

in their opposition to the State Defendants' Motion to Dismiss. Moreover, it is at least plausible that if she violates that District policy she will in fact be fired or otherwise subjected to an adverse employment action. And, in any event, Hillsborough does not deny that, as Ms. Wood explained in her motion for preliminary injunction, Doc. 11 at 16–18, being forced to avoid using her title and pronouns constitutes an adverse employment action.

Finally, Hillsborough repeatedly argues that Ms. Wood has not shown "animus" because its actions are due to

1991), Key West cannot be liable for enforcing an unconstitutional state statute which the municipality did not promulgate or adopt. First, § 1983 liability is appropriate because Key West did adopt the unconstitutional proscriptions … as its own. … [Defendant's] decision

United States Supreme Court. *Id.* at 485 (citing *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 761 (1994)).

Hillsborough argues that it has no discretion about whether to permit Ms. Wood to use her pronouns and title in class. But while it is possible that the state will act against Hillsborough if it does not affirmatively require its employees to comply with subsection 3, nothing in subsection 3 explicitly requires it to do so and Hillsborough would not be violating any state statute or regulation if it did not. Instead, Ms. Wood alleged that if she violates subsection 3 and someone makes a complaint about it, then state law requires Hillsborough to relay that complaint to the state. Doc. 56 ¶ 40. The superintendent is also required to make complaints when he is aware of violations of state law. *Id.* Ms. Wood also alleged that the State Board of Education has the power to enforce subsection 3. *Id.* ¶¶ 48-51. But nothing in subsection 3 requires Hillsborough to discipline or fire Ms. Wood if she violates subsection 3, nor does it require Hillsborough to take action to prohibit her from using her title and pronouns. It could allow her to violate the law if she wished and then report her to the state if she did so.

Conversely, if Ms. Wood succeeds in enjoining all State Defendants from enforcing subsection 3, that injunction would not bind Hillsborough and would therefore not stop it from continuing to bar Ms. Wood from using her pronouns and title. Hillsborough has taken the discretionary step of choosing to enforce the law

against Ms. Wood itself, which, in this circuit, subjects it to liability under *Monell*. *See Cooper*, 403 F.3d at 1222; *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1290 (11th Cir. 2004) (school district's choice to require flag salute was a policy under *Monell* because it went beyond precise requirements of state law).

Finally, even if Hillsborough was correct that it lacked discretion, that would absolve it only of liability for damages, not immunize the school board in its official capacity and/or its employees from liability. As the Seventh Circuit, which has taken the broadest position about the scope of a state law's limitation of *Monell* liability, has explained, "when a municipal employee carries out a policy established by state law … liability fall[s] on the employee personally, on the ground that the municipality is not the author of the policy the employee implements[.]"

Hillsborough County, Florida, School Board's Motion to Dismiss be denied.

Respectfully submitted.

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/s/ *Carli Raben*

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