NO. 12-3218

UNITED STATES COURT OF APPEALS
FOR THE
SIXTH CIRCUIT

CRYSTAL DIXON,
Plaintiff-Appellant,

v.

UNIVERSITY OF TOLEDO,
Defendant,

AND

LLOYD JACOBS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS PRESIDENT, UNIVERSITY OF TOLEDO; **WILLIAM LOGIE**, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS VICE PRESIDENT FOR HUMAN RESOURCES AND CAMPUS SAFETY, UNIVERSITY OF TOLEDO,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
HONORABLE DAVID A. KATZ
Civil Case No. 3:08-cv-02806

APPELLANT'S PRINCIPAL BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Plaintiff-Appellant Crystal Dixon states the following:

Plaintiff-Appellant is not a subsidiary or affiliate of a publicly owned corporation. There are no publicly owned corporations, not a party to this appeal, that have a financial interest in the outcome.

REASONS WHY ORAL ARGUMENT SHOULD BE PERMITTED

Pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure and 6th Cir. R. 34(a), Plaintiff respectfully requests that this court hear oral argument. This case presents for review important questions of law arising under the First and Fourteenth Amendments to the United States Constitution.

Oral argument will assist this court in reaching a full understanding of the issues presented and the underlying facts. Moreover, oral argument will allow the attorneys for both sides to address any outstanding legal or factual issues that this court deems relevant.

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STATEMENT OF JURISDICTION

On December 1, 2008, Plaintiff filed her initial Complaint against all Defendants, alleging violations of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. (R-1: Compl.). The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

On January 10, 2011, a Second Amended Complaint was filed against Defendant Lloyd Jacobs, individually and in his official capacity as President of the University of Toledo, and against Defendant William Logie, individually and in his official capacity as Vice President for Human Resources and Campus Security at the University of Toledo. (R-57: Second Am. Compl.). Defendants answered on January 13, 2011. (R-58: Answer).

On April 29, 2011, Plaintiff filed a motion for summary judgment, (R-60: Pl.'s Mot. for Sum. J.), and Defendants responded on May 23, 2011, (R-73: Defs.' Opp'n). On May 2, 2011, Defendants filed a motion for summary judgment, (R-71: Defs.' Mot. for Summ. J.), and Plaintiff responded on May 23, 2011, (R-72: Pl.'s Opp'n).

On February 6, 2012, the court entered its memorandum opinion denying Plaintiff's motion for summary judgment and granting Defendants' motion. (R-79: Op.). Judgment was subsequently entered in favor of Defendants. (R-80: J.).

On February 21, 2012, Plaintiff filed a timely notice of appeal (R-84), seeking review of the district court's opinion. This appeal is from a final order and judgment that disposes of all parties' claims. This court has jurisdiction pursuant to 28 U.S.C. § 1291.

PRELIMINARY STATEMENT

In *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), the U.S. Supreme Court stated, "If there is any fixed star in our constitutional constellation, it is that *no official*, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *Id.* at 642 (emphasis added). In direct contravention, Defendants seek to prescribe what "shall be orthodox" in matters of opinion by permitting University of Toledo employees to express personal messages that promote certain *favored* viewpoints on controversial political and social issues, while censoring certain *disfavored* viewpoints, such as Plaintiff's Christian viewpoint on the issue of homosexuality. As a result of Defendants' speech restriction, which resulted in the firing of Plaintiff Crystal Dixon from her employment with the University because she expressed her personal views as a private citizen in an opinion piece published in the *Toledo Free Press*, that "fixed star" in our constitutional constellation has been obscured and an official orthodoxy prescribed in direct violation of the First Amendment.

STATEMENT OF THE ISSUES FOR REVIEW

I. Whether Defendants violated Plaintiff Crystal Dixon's First Amendment right to freedom of speech when they fired her for expressing her personal opinion and viewpoint on an issue of public concern in a local newspaper.

II. Whether Defendants' speech restriction, which grants unbridled discretion in government officials to determine which opinions and viewpoints are permissible and which are prohibited, violates the First Amendment.

III. Whether Defendants violated the Equal Protection Clause of the Fourteenth Amendment when they granted use of a forum for speech to employees whose personal views they find acceptable, but denied use of this forum to Plaintiff Crystal Dixon because she expressed a less favorable view.

STATEMENT OF THE CASE

On December 1, 2008, Plaintiff filed her initial Complaint against all Defendants, alleging violations of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. (R-1: Compl.).

On January 10, 2011, Plaintiff filed a Second Amended Complaint against Defendant Lloyd Jacobs, individually and in his official capacity as President of the University of Toledo, and against Defendant William Logie, individually and in his official capacity as Vice President for Human Resources and Campus Security at the University of Toledo. (R-57: Second Am. Compl.). In her

complaint, Plaintiff alleged violations of her rights guaranteed by the First and Fourteenth Amendments. Specifically, Plaintiff alleged that Defendants violated her right to freedom of speech and denied her the equal protection of the law when they fired her for expressing her personal opinion on a matter of public concern in a local newspaper.

During April and May 2011, the parties filed cross-motions for summary judgment. (R-60: Pl.'s Mot. for Sum. J.; R-73: Defs.' Opp'n; R-71: Defs.' Mot. for Summ. J.; R-72: Pl.'s Opp'n).

On February 6, 2012, the district court entered its memorandum opinion denying Plaintiff's motion for summary judgment and granting Defendants' motion. (R-79: Op.). This appeal follows.

STATEMENT OF FACTS

In January 2002, Plaintiff began working as the administrative director of employee relations at the Medical College of Ohio ("MCO") (later to become part of the University of Toledo ("University")). She was eventually promoted to acting Administrator for Human Resources. (R-71: Dixon Dep. at 37, 38, 61, 64-65). Plaintiff was recruited by Defendant William Logie to MCO, and her career at MCO was one of upward advancement based upon her stellar job performance. (R-60: Logie Dep. at 17-18, Pl.'s Ex. 1; R-71: Dixon Dep. at 37). Defendant Logie, a University Vice President and Director of Human Resources, sought out

Plaintiff because she consistently *exceeded* expectations in her job performance, and she furthered MCO's diversity goals. (R-60: Logie Dep. at 17-18, 29, Pl.'s Ex. 1). Even after her termination, Defendant Logie, who was Plaintiff's direct supervisor, agreed that

> There isn't a day that goes by that Crystal doesn't demonstrate the highest degree of professionalism, dignity and behaviors that exemplify *her Christian values*.

(R-68: Logie Dep. at 30-31) (emphasis added).

Each year of her employment, Defendant Logie gave Plaintiff the highest rating for embracing diversity. As Defendant Logie noted:

> Crystal continues to set the standard for an HR Professional Manager. Her willingness to re-think issues *despite personal biases* speak to her extra-ordinary character. What a great person to be working with!

(R-60: Pl.'s Perform. Evals., Pl.'s Exs. 2 & 3; R-60: Logie Dep. at 29, Pl.'s Ex. 1) (emphasis added).

On July 1, 2006, the University merged with MCO, creating the university as it exists today with two campuses: the University campus and the Health Sciences campus (formerly MCO). Shortly after the merger, Plaintiff was named Associate Vice President for Human Resources—Health Science Campus. On July 9, 2007, Plaintiff was promoted to the position of interim Associate Vice President for Human Resources over all University campuses. (R-71: Dixon Dep. at 64, 65, 66).

Defendants knew Plaintiff's personal Christian views as far back as 2003, but they also knew that Plaintiff was impartial in her hiring and other employment-related practices "despite [her] personal biases," as was noted in Plaintiff's performance evaluations. (R-60: Pl.'s Perform. Eval., Pl.'s Ex. 2; R-71: Dixon Dep. at 64; *see also* R-79: Op. at 2 (noting that Defendant Logie "clearly knew of her views on homosexuality . . . years earlier")).

On or about April 3, 2008, Plaintiff read an opinion piece published in the *Toledo Free Press* that was authored by Michael Miller and titled, "Lighting the Fuse: Gay Rights and Wrongs." (R-60: Miller Op., Pl.'s Ex. 6). Miller's opinion piece equated homosexual activity with the struggles of African-American civil rights victims. (R-60: Miller Op., Pl.'s Ex. 6). Plaintiff disagreed with the viewpoint expressed by Miller and decided to submit her own opinion piece to the *Toledo Free Press* to express her personal viewpoint on this matter of public concern. (R-60: Dixon Op., Pl.'s Exs. 7 & 8).

Plaintiff, an African-American woman and sincere practicing Christian, believes that homosexuality is a grave offense against the Law of God and that comparing homosexual activity with the struggles of African-American civil rights victims is wrong and untenable because homosexuality is a lifestyle choice and not an immutable or inherent genetic and biological characteristic like [her] skin or eye color. (R-60: Dixon Op., Pl.'s Exs. 7 & 8).

On April 18, 2008, Plaintiff's opinion piece, titled "Gay Rights and Wrongs: Another Perspective," was published in the *Toledo Free Press* online edition.[1] In the opinion piece, Plaintiff expressed her personal viewpoint, stating, in relevant part, "I respectfully submit a different perspective for Miller and *Toledo Free Press* readers to consider . . . . I take great umbrage at the notion that those choosing the homosexual lifestyle are civil rights victims." Plaintiff signed her opinion piece as "Crystal Dixon." (R-60: Pl.'s Op., Pl.'s Ex. 8). Plaintiff did not write her opinion piece pursuant to her official duties at the University, and never once did she claim to be writing on behalf of the University. Plaintiff wrote her opinion piece as a private citizen addressing a matter of public concern. (R-71: Dixon Dep. at 155) ("*I was writing as a private citizen on a Sunday from my home computer*.") (emphasis added); R-60: Dixon Op., Ex. 8; R-60: Logie Dep. at 66, Pl.'s Ex. 1; R-60: Dixon Mem. to Jacobs, Pl.'s Ex. 9).

On or about April 18, 2008, Defendant Logie met with Plaintiff and informed her that he knew the opinion piece was printed online and that he had received some complaints. Plaintiff asked Defendant Logie, "[W]hat was my sin," and he responded that "he didn't know yet." (R-71: Dixon Dep. at 158). On April 21, 2008, Plaintiff was placed on administrative leave pending an investigation. (R-60: Interoffice Mem., Pl.'s Ex. 11).

[1] The *Toledo Free Press* is an independent newspaper; it has no affiliation with the University.

On May 4, 2008, an opinion piece authored by "Dr. Lloyd Jacobs, University of Toledo President" was published in the *Toledo Free Press*. (R-60: Jacobs Op., Pl.'s Ex. 10). In this published piece, Defendant Jacobs stated, in relevant part, "Crystal Dixon is associate vice president for Human Resources at the University of Toledo, her comments do not accord with the values of the University of Toledo. . . . It is necessary, therefore, for me to repudiate much of her writing. . . . We (the University) will be taking certain internal actions in this instance to more fully align our utterances and actions with this value system. . . . It is my hope there may be no misunderstanding *of my personal stance*, nor the stance of the University of Toledo, concerning the issues of 'Gay Rights and Wrongs.'" The opinion piece concluded, "Dr. Lloyd Jacobs is president of the University of Toledo." (R-60: Jacobs Op., Pl.'s Ex. 10) (emphasis added).

On May 12, 2008, Plaintiff received a letter from Defendant Jacobs dated May 8, 2008, stating that effective immediately her employment at the University was terminated because of "the public position you have taken in the *Toledo Free Press*." (R-60: Jacobs Ltr., Pl.'s Ex. 12).

Defendant Logie testified that although he knew Plaintiff's personal opinions prior to the publication of the article—opinions which have never had any effect on Plaintiff's ability to perform her job at the highest level—by expressing

those opinions in public, she was no longer able to do her job.[2] (R-60: Logie Dep. at 46, Pl.'s Ex. 1; *see also* R-71: Dixon Dep. at 64).

On other occasions, employees of the University, including its President, Defendant Jacobs (*see* R-60: Jacobs Op., Pl.'s Ex. 10), have publicly expressed personal opinions and viewpoints about various political and social issues. (R-60: Jacobs Dep. at 218, Pl.'s Ex. 4). In fact, the Vice Provost of the University, Carol Bresnahan, *who was identified by her official University position*, was quoted in the *Toledo Blade* in December 2007 as stating, "[B]igotry is to blame for those who oppose the [domestic-partner registry] law. *It's their religious beliefs*, and bigotry in the name of religion is still bigotry." (R-60: *Toledo Blade* Article, Pl.'s Ex. 13; R-60: Jacobs Dep. at 218, Pl.'s Ex. 4) (emphasis added). Despite the alleged emphasis on tolerance, equality, and diversity at the University, Defendant Jacobs did not reprimand Ms. Bresnahan for her bigoted, anti-religious comments, let alone terminate her employment. (R-60: Jacobs Dep. at 218, Pl.'s Ex. 4). In explaining the inconsistency, Plaintiff Jacobs testified that "if you make a statement contrary to the university's value system, that's not fine." (R-60: Jacobs

[2] Defendant Logie is jointly and severally liable for Plaintiff's firing for at least three reasons. First, Defendant Logie is a high-ranking, policymaker for the University and a confidential advisor to President Jacobs. Second, Defendant Logie was at all relevant times Plaintiff's direct supervisor. And finally, Defendant Logie fully supported and concurred with the firing of Plaintiff for expressing her personal religious beliefs in the *Toledo Free Press*, as noted above. Consequently, it is proper to conclude from the evidence that he, along with Defendant Jacobs, is responsible for firing Plaintiff.

Dep. at 222, Pl.'s Ex. 4). Thus, according to Defendant Jacobs, it is permissible for high-ranking University officials to publicly proclaim that Christians, such as Plaintiff, are *bigots* because doing so somehow comports with the "university's value system."[3]

Defendant Jacobs believes that "employees, by virtue of their employment contract, stated or unstated, implicit or explicit, agree to certain curbs on their utterances such that we don't violate the principles, the strategic plans, the stated value system of the institution." (R-65: Jacobs Dep. at 35). Therefore, employees that express personal viewpoints and opinions contrary to the self-proclaimed orthodox viewpoints and opinions of the University risk disciplinary action. Indeed, Defendant Jacobs justified his right to publicly express the exact opposite personal opinion and viewpoint of Plaintiff by declaring that his *personal* belief "is more consistent with the personal belief of the university." (R-66: Jacobs Dep. at 190). Thus, as Defendant Jacobs testified, Plaintiff is only allowed to express her personal (religious) viewpoint and opinions "to the extent they don't violate the values and ethics of the institution." (R-60: Jacobs Dep. at 24, Pl.'s Ex. 4). He further explained that to the extent an employee's religious convictions may be perceived as inconsistent with University goals, that employee is expected to

[3] Indeed, Defendants' termination of Plaintiff's employment because she expressed her personal religious beliefs violates the University's policy, "values," and "ethics" against employment discrimination in the first instance.

refrain from expressing those opinions by virtue of her employment with the University.[4] (*See* R-60: Jacobs Dep. at 27-30, Pl.'s Ex. 4). Consequently, Christians, such as Plaintiff, who have strong personal religious convictions and a desire to express them to the public outside of their employment, are apparently disqualified from holding managerial positions at this "diverse" public university.

Upon terminating Plaintiff's employment for expressing her personal religious views in the *Toledo Free Press*, Defendants ceased providing Plaintiff with wages or salary and all other benefits of employment at the University. (R-60: Jacobs Ltr., Pl.'s Ex. 12). Since she was fired for expressing her personal viewpoint in the *Toledo Free Press* in 2008, and until approximately April 25, 2011, Plaintiff had been unable to secure a comparable position with another employer, despite her diligent efforts to do so. As a result of Defendants' actions, Plaintiff has suffered, and continues to suffer, significant emotional and financial damage. (R-60: Dixon Dep. at 202-14, Pl.'s Ex. 5).

SUMMARY OF THE ARGUMENT

Plaintiff, an African-American woman and devout Christian, was fired from her government employment with the University of Toledo for writing an op-ed in a local newspaper that addressed the issue of gay rights from her personal,

[4] Defendant Jacobs testified that although Plaintiff was expressing her personal opinion, "she was not in a position to express her personal opinion." (R-66: Jacobs Dep. at 210).

Christian perspective and viewpoint. Plaintiff was responding to an op-ed that was previously published by the newspaper's editor, Michael Miller. Plaintiff took personal offense to Miller's assertion that the struggles faced today by those promoting special rights for homosexuals are similar to the historical struggles of African-Americans during the civil rights movement. Plaintiff's article directly responded to this assertion from her perspective as an African-American woman and from her perspective as a devout Christian. For this, the University, through Defendants, fired Plaintiff, thereby retaliating against her and punishing her for exercising her right to freedom of speech in violation of the First Amendment.

Plaintiff's speech rests on the highest rung of the hierarchy of First Amendment values. Plaintiff's interest (and the interest of society) in having a robust, uninhibited debate on such an important public issue should be accorded the greatest weight. And yet, when it came time to balance Plaintiff's interests in exercising her fundamental right to freedom of speech against the interests of the University of Toledo as an employer in promoting the public services it performs, the district court judge accorded Plaintiff's interests no weight whatsoever and instead placed his finger on the scale and weighed the balance in favor of Defendants based upon unfounded fears and rank speculation.[5] Indeed,

[5] The district court acknowledged that Defendants' claimed interests were "speculative." (R-79: Op. at 11).

Defendants' asserted interest in "diversity" and "tolerance" is undermined by their very actions, demonstrating that their interests are in fact illegitimate.

Additionally, by permitting some employees to engage in speech on the issue of gay rights in the local newspapers but punishing Plaintiff for doing so based on her personal religious viewpoint, Defendants have not only violated Plaintiff's right to freedom of speech, they have also deprived her of the equal protection of the law guaranteed by the Fourteenth Amendment.

In sum, debate on public issues should be uninhibited, robust, and wide-open. Indeed, our Constitution guarantees nothing less. Consequently, when government officials seek to silence one side of a debate on an important public issue by leveraging their authority as an employer, they violate fundamental rights enshrined in our Constitution.

ARGUMENT

I. Standard of Review.

This court reviews the district court's grant of summary judgment *de novo*. *Alspaugh v. McConnell*, 643 F.3d 162, 168 (6th Cir. 2011). It may affirm only if the record, *read in the light most favorable to Plaintiff*, reveals no genuine issues of material fact and shows that Defendants were entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Upon its review of the record, this court must consider the evidence and draw all reasonable inferences in favor of Plaintiff. *Barker v.*

Goodrich, 649 F.3d 428, 432 (6th Cir. 2011); *Siggers-El v. Barlow*, 412 F.3d 693, 699 (6th Cir. 2005).

Additionally, because this case implicates First Amendment rights, this court must closely scrutinize the record, without any deference to the district court. *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 567 (1995) (requiring courts to "conduct an independent examination of the record as a whole, without deference to the trial court" in cases involving the First Amendment); *see also Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984) (noting that in cases raising First Amendment issues appellate courts must make an independent examination of the whole record).

In sum, upon this court's *de novo* review of this case, it should reverse the district court's grant of summary judgment for Defendants, reverse its denial of summary judgment for Plaintiff, and enter judgment in Plaintiff's favor as to liability on all claims.

II. Plaintiff Does Not Surrender Her Constitutional Rights Upon Accepting Employment with the Government.

"It is well settled that 'a State cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression.'" *Garcetti v. Ceballos*, 547 U.S. 410, 413 (2006) (quoting *Connick v. Myers*, 461 U.S. 138, 142 (1983)); *Rankin v. McPherson*, 483 U.S. 378, 383 (1987) ("[A] State may not discharge an employee on a basis that infringes that

employee's constitutionally protected interest in freedom of speech."); *City of San Diego v. Roe*, 543 U.S. 77, 80 (2004) (same).

Here, Defendants violated Plaintiff's right to freedom of speech by terminating her employment because she authored an opinion piece in a local newspaper in which she expressed her *personal* opinion and viewpoint on the issue of homosexuality and civil rights from the perspective of a Christian, African-American woman.

III. Defendants Retaliated Against Plaintiff for Expressing Her Personal Opinion and Viewpoint on a Matter of Public Concern in Violation of the First Amendment.

To determine whether Defendants violated the Constitution by retaliating against Plaintiff for expressing her personal opinion and viewpoint in the *Toledo Free Press*, this court must decide whether (1) Plaintiff engaged in a constitutionally protected activity (freedom of speech); (2) an adverse action was taken against Plaintiff that would deter a person of ordinary firmness from continuing to engage in that constitutionally protected activity; and (3) there is a causal connection between the exercise of the constitutionally protected right and the adverse action (*i.e.,* that the speech was a motivating factor for the adverse action). *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Village Sch. Dist.*, 624 F.3d 332, 337 (6th Cir. 2010).

A. By Authoring an Opinion Piece in the *Toledo Free Press* in which She Expressed Her Personal Viewpoint on Homosexuality and Civil Rights, Plaintiff Was Engaging in Constitutionally Protected Activity.

The first prong of Plaintiff's retaliation claim requires this court (1) to determine whether Plaintiff's speech involved a matter of public concern; (2) to balance Plaintiff's interest as a private citizen to comment on a matter of public concern against the interest of the University as an employer in promoting the public services it performs; and (3) to determine whether Plaintiff's opinion piece was written *pursuant to* her official duties as an employee of the University.[6] *Evans-Marshall*, 624 F.3d at 337-40. All three considerations favor Plaintiff.

1. Plaintiff's Speech Involved a Matter of Public Concern.

The First Amendment protects the speech of government employees when that speech involves "matters of public concern." *Connick*, 461 U.S. at 143. Speech that "fairly [may be] considered as relating to" issues "of political, social, or other concern to the community" is speech involving "matters of public concern." *Id.* The court determines whether speech involves a matter of public concern by looking "to the content, form, and context of the statements in light of the record as a whole." *Akers v. McGinnis*, 352 F.3d 1030, 1038 (6th Cir. 2003)

[6] Simply writing an opinion piece in a local newspaper that discusses content that might, in some part, relate to a person's employment does not make the writing of the news article "pursuant to" the person's employment under *Garcetti v. Ceballos*, 547 U.S. 410 (2006). *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), itself affirms that point.

(internal quotations and citation omitted). "Speech made to a public audience, outside the workplace, and involving content largely unrelated to government employment indicates that the employee speaks as a citizen, not as an employee, and speaks on a matter of public concern." *Scarbrough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 256 (6th Cir. 2006). And "the entire speech does not have to address matters of public concern, as long as some portion of the speech does." *Id.* (internal quotations and citations omitted).

The speech at issue here is Plaintiff's opinion piece that was published in the *Toledo Free Press*, a local newspaper, in response to an earlier published opinion piece written by a private individual—the editor in chief of the *Toledo Free Press* (*n.b.*: Plaintiff's article was not directed toward, nor critical of, the University, University policies, or anyone employed by the University). Both opinion pieces addressed the issue of homosexuality and civil rights, and they did so from different viewpoints. There can be no reasonable dispute that Plaintiff's article was addressing the issue of whether it is appropriate to compare the civil rights struggles of African-Americans with the struggles and lifestyle choices of homosexuals. Plaintiff addressed this issue of public concern from her perspective as a Christian, African-American woman (not as an employee of the University). She was not speaking on behalf of her employer (and nowhere indicated that she was), nor was she even criticizing any policy or practice of her employer. The

only substantive reference to the University of Toledo was to correct a misstatement of fact in the prior editorial. (R-60: Dixon Op., Pl.'s Ex. 8) ("The reference to the alleged benefits disparity at the University of Toledo was rather misleading.").[7] Indeed, Plaintiff was simply affirming that the University does not discriminate against anyone in the healthcare benefits it provides regardless of sexual orientation. Thus, when viewed in its proper context, Plaintiff's opinion piece was not expressing political or policy views related to the University (and there was certainly nothing in the article that could be construed as insubordination); she was expressing her personal, Christian view on a matter of broad public concern.

In light of the content, form, and context of Plaintiff's speech, and the fact that the "speech" was made to a public audience, outside the workplace, and involving content largely unrelated to Plaintiff's employment, there can be no

[7] As Plaintiff testified, "This disparity refers to the Health Science Campus had a totally different benefit package for health science employees regardless of sexual orientation compared to the main campus employee benefits. That's what I was referring to." (R-71: Dixon Dep. at 161). Moreover, "The University's movement to providing reasonable, cost-efficient benefit plans for all employees has been publicly discussed by staff and administration in the President's Town Hall meetings, President's website (Q&A), faculty/staff benefits subcommittee update, newsprint and more—all of which have been open to media hearing and could be referenced by anyone." (R-60: Dixon Mem., Pl.'s Ex. 9; *see also* R-66: Jacobs Dep. at 210 ("I don't disagree with the fact that a lot of this is common knowledge.")).

question that Plaintiff was speaking as a private citizen, not as an employee, on a matter of public concern.[8] *Connick*, 461 U.S. at 143; *Scarbrough*, 470 F.3d at 257.

2. Plaintiff's Interest in Expressing Her Personal Opinion and Viewpoint in the *Toledo Free Press* Significantly Outweighs Any Interest of the University in Promoting Its Public Services.

Because Plaintiff's speech touched upon a matter of public concern, the court must then balance the interest of Plaintiff "as a citizen, in commenting upon matters of public concern" against "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Pickering*, 391 U.S. at 568. This balance falls strongly in favor of Plaintiff.

Plaintiff's expression on public issues is afforded the greatest protection under our Constitution. The U.S. Supreme Court "has recognized that expression on public issues 'has always rested on the highest rung of the hierarchy of First Amendment values.'" *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (citations omitted). Plaintiff's interest (and the interest of society) in having a robust, uninhibited debate on important public issues must be accorded the greatest weight. *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964) (acknowledging

[8] As Plaintiff told Defendant Jacobs, "I wrote [the opinion piece] as a citizen, representing only myself, and I did not purport to speak for or represent the University of Toledo. I wrote my personal opinion, based upon my Christian faith, rooted in the foundation of Holy Scripture which is my Constitutional right. Any reader who did not know me, would absolutely not infer my place of employment from reading the article." (R-60: Dixon Mem., Pl.'s Ex. 9).

"a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open"). Indeed, permitting Plaintiff to express her personal opinion and viewpoint on this matter of public concern in the *Toledo Free Press* and thereby allowing her to meaningfully contribute to this public debate—particularly in light of the fact that she is an African-American woman and thus has a unique perspective to offer[9]—promotes the University's interests as well. As the Supreme Court noted, "American schools" are "peculiarly the 'marketplace of ideas.'" *Healy v. James*, 408 U.S. 169, 180 (1972). And in *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003), the Court stated, "We have long recognized that, given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition."

Consider further the following undisputed facts:

- Defendants knew of Plaintiff's personal, Christian beliefs when she was hired and, in fact, favorably commented in Plaintiff's evaluation that she "continues to set the standard" for a human resources "professional manager" and demonstrates a "willingness to re-think issues despite personal biases";

[9] As an African-American woman, Plaintiff is clearly a "member[] of a community most likely to have informed and definite opinions as to" the civil rights struggles of African-Americans and any comparisons of these struggles with the lifestyle choices of homosexuals. *See Pickering*, 391 U.S. at 572. Accordingly, it is essential that she "be able to speak out freely on such questions without fear of retaliatory dismissal." *See id.*

- There is no evidence of Plaintiff ever discriminating against (or even suggesting that someone should discriminate against) anyone in the workplace for any reason. The very opposite is true. In fact, there is a general understanding that one or two employees of the Human Resources Department are homosexuals, and Plaintiff "hired both of them with the perception that while they may be homosexual, more importantly they were competent, motivated and simply the best candidates for the job." (R-60: Dixon Mem., Pl.'s Ex. 9). Consequently, any fear that Plaintiff would discriminate in the performance of her duties is utterly unfounded.

Indeed, Defendants' "interest" can be distilled to this: they claim the right to fire Plaintiff for expressing her personal opinion on a matter of public concern in the *Toledo Free Press* because they don't like her *Christian* viewpoint.[10]

Defendants assert that Plaintiff's article apparently reveals something about her personal religious beliefs that disqualifies her for her government position. Yet, Plaintiff clearly held these *known* beliefs for the entirety of her career at the University. And those beliefs have never had a negative impact on her job performance. To the contrary, Plaintiff consistently received stellar performance

[10] As noted, Plaintiff's opinion piece did not criticize any policy of the University, any services provided by the University, or anyone that works for the University. (R-60: Dixon Op., Pl.'s Ex. 8).

reviews and promotions over the years and recognition for impartiality "despite personal biases."

To avoid the obvious and inconvenient conclusion that Defendants violated Plaintiff's constitutional rights, Defendants posit the untenable position that the firing was legitimate because Plaintiff was a "confidential or policymaking public employee."[11] This illegitimate position was incorrectly affirmed by the district court. (*See* R-79: Op. at 10).

In *Rose v. Stephens*, 291 F.3d 917, 921 (6th Cir. 2002), this Circuit "adopt[ed] the rule that, where a confidential or policymaking public employee is discharged on the basis of speech *related to his political or policy views*, the *Pickering* balance favors the government as a matter of law." The rule adopted applies "*where the employee's speech relates to either his political affiliation or substantive policy*." *Id*. (emphasis added).

In *Rose*, the plaintiff's termination as the Commissioner of the Kentucky State Police resulted from a dispute between himself and the Secretary of Kentucky's Justice Cabinet over the plaintiff's refusal to withdraw a memorandum

[11] As an initial matter, the application of the *Elrod/Branti* exception, which is grounded in the notion that "party affiliation is an appropriate requirement for the effective performance of the public office involved" so as not to thwart the goals of the in-party, *Branti v. Finkel*, 445 U.S. 507, 518 (1980), to the facts of this case is disturbing. It is one thing to say that one's party affiliation is an important factor when accepting a high-level political position, but it is quite another to say that government officials can fire an employee because they disagree with her religious beliefs, as in this case.

which he had submitted to the Secretary and the governor of Kentucky announcing his decision to eliminate the position of deputy police commissioner. *Id.* at 919. In its decision, the court outlined four general categories of positions to which the exception applies. These "categories" include (1) positions specifically named in relevant law to which discretionary authority with respect to the enforcement of that law or the carrying out of some other *policy of political concern* is granted; (2) positions to which a "*significant portion*" of category-one authority has been delegated, or positions not specifically named by law but inherently possessing category-one type authority; (3) confidential advisors who spend a "*significant portion*" of their time on the job advising category-one or category-two position-holders or who control the lines of communications to such persons; or (4) positions that are part of a group of positions filled by balancing out political party representation or by balancing out selections made by different government bodies. *Id.* at 924.

Based on this analysis, the court concluded that "[t]he cabinet-level designation and broad range of discretionary authority granted under Kentucky law to the police commissioner demonstrate that plaintiff unquestionably occupied a category one position." *Id.* But that did not end the inquiry. The "final step" in the court's analysis was to determine whether the offending memorandum "addressed political or policy-related issues." *Id.* The court concluded that it did

in that the issues addressed "are clearly related to police department policies." *Id.* at 925; *see also Latham v. Office of the Atty. Gen. of Ohio*, 395 F.3d 261, 268 (6th Cir. 2005) (holding that "as a confidential advisor to, and delegatee of, a policymaking employee [*i.e.*, the Attorney General] on job-related matters," the plaintiff, an Assistant Attorney General, held a position that fell "sufficiently within the bounds of Categories Two and Three" and thus her letter to the Attorney General outlining concerns she had with the settlement of a case she was handling and the general direction of the Consumer Protection Section to which she was assigned was not protected speech); *see also Silberstein v. City of Dayton*, 440 F.3d 306, 320 (6th Cir. 2006) (holding that the plaintiff, having prepared—pursuant to her "duty"—a report to the Civil Service Board on the problems with the diversity plan that was under consideration, was a policymaking employee because she was "responsible for making important policy implementation recommendations to a policymaker" and could thus be terminated for writing a letter in which she criticized the City Commission's actions in their efforts to implement the new diversity plan).

In this case, the district court incorrectly held that Plaintiff's position falls within category two. (R-79: Op. at 10) (concluding "that Plaintiff was vested with a significant portion of the statutory authority available, placing her within category two"). Indeed, as Defendants acknowledged below, Plaintiff was

responsible for "*monitor*[*ing*] *and enforce*[*ing*] UT's policy prohibiting discrimination against or harassment of employees based on sexual orientation" and "*promot*[*ing*] *and enforc*[*ing*]" decisions made by the University related to "who is and is not entitled to protection under UT's policies"—responsibilities shared by every University employee. (R-71: Defs.' Br. in Supp. of Mot. for Summ. J. at 10) (emphasis added). Consequently, Plaintiff was not a policymaker nor was a "*significant portion*" of policy making delegated to her. In fact, the University did not delegate to Plaintiff any authority to approve, adopt, amend, or rescind policy. (R-72: Dixon Decl. at ¶¶ 2, 3, Exs. A, B, Ex. 1). Similarly, Plaintiff did not spend a "*significant portion*" of her time on the job advising policymakers (or their delegatees) or controlling lines of communications to such persons (or their delegatees). As Defendants acknowledge, Plaintiff's job involved *enforcing* policy and *managing* the human resources department for the University consistent with existing policy—tasks that she performed in an extraordinary and non-discriminatory fashion both before and after publishing her personal, Christian views in the *Toledo Free Press*. (R-72: Dixon Decl. at ¶¶ 2-12, Ex. 1); *see Everson v. Bd. of Educ. of the Sch. Dist. of the City of Highland Park*, No. 02-72552, 2006 U.S. Dist. LEXIS 13248, at *20-21 (E.D. Mich. Mar. 10, 2006) (holding that a school principal was not a policymaking or confidential employee

pursuant to the *Elrod*/*Branti* exception because her duties were largely managerial, and she enforced policy handed down by the Board of Education).

As the district court noted, "The Board of Trustees is charged, by Ohio law, with governing the university. . . . Thus, it falls within category one." (R-79: Op. at 9). Clearly, Plaintiff's position does not fall within this category, as the district court implicitly acknowledged. (R-79: Op. at 9-10).

Moreover, as this Circuit stated, a category two position includes "positions to which a *significant portion* of the *total* discretionary authority *available to category one position-holders has been delegated*." *McCloud v. Testa*, 97 F.3d 1536, 1557 (6th Cir. 1996) (emphasis added); *Rose*, 291 F.3d at 294. There is no dispute that the Board of Trustees has not delegated to Plaintiff a "significant portion" of its "total" discretionary authority to make policy for the University. Although Plaintiff had authority to make some hiring decisions—decisions that must comport with existing University policy—she had no discretion to make policy regarding hiring practices nor was she delegated any such authority, let alone a "significant portion" of it. Moreover, she had no authority, delegated or otherwise, to make any other policy of political concern. In sum, she did not hold a category two position at the University. The district court was incorrect.

Finally, Plaintiff's opinion piece does not meet the "final step" of the inquiry in that it was not speech that "*relates to either* [*her*] *political affiliation or*

substantive policy." Plaintiff was clearly expressing a personal viewpoint from her perspective as a Christian, African-American women on the issue of whether the comparison made by the editor in chief of the *Toledo Free Press* between the historic civil rights struggles of African-Americans and the alleged struggles of homosexuals today is a legitimate comparison. The only reference to the University was to correct a misstatement of fact regarding the disparity in benefit plans between the two campuses—information that was available to the public. And this comment was hardly critical. In fact, Plaintiff praised the University for "working diligently to address this issue in a reasonable and cost-efficient manner, for all employees." (R-60: Dixon Op., Pl.'s Ex. 8).

In sum, the undisputed evidence shows that Plaintiff's job performance was at all times exceptional. Plaintiff's "statements are in no way directed towards any person with whom [she] would normally be in contact in the course of [her] daily work . . . . Thus no question of maintaining either discipline by immediate superiors or harmony among coworkers is presented here." *See Pickering*, 391 U.S. at 569-70. Additionally, other University officials, including Defendant Jacobs, were permitted to express *personal* and controversial opinions on the very same subject in the *Toledo Free Press* without being punished for doing so. (R-60: Jacobs Op., Pl.'s Ex. 10) ("It is my hope there may be no misunderstanding of my personal stance . . . concerning the issues of 'Gay Rights and Wrongs.'").

Consequently, there can be no harm to the University's legitimate interests in permitting its employees to engage in a public debate in a local newspaper on a significant social issue. One would expect a university to welcome such debate. Unfortunately, it appears that Defendants seek to monopolize the "marketplace of ideas" by only permitting the public expression of personal opinions that comport with the official orthodoxy established by the University in violation of the Constitution.

Consider further the district court's baseless conclusion that the University's alleged interests trump Plaintiff's fundamental right to freedom of speech. The district court found, based on rank speculation, that Plaintiff's "statements against the rights of homosexuals could have done very serious damage to the University in three ways." (R-79: Op. at 10-11). These three ways are as follows. First, based on a single letter from a co-worker, the district court found that Plaintiff's publicly professed religious beliefs could make homosexual employees feel "uncomfortable or disgruntled."[12] (R-79: Op. at 11). Next, the district court found

[12] It can't be, as Defendants suggested and as the district court concluded, (*see* R-79: Op. at 11) (citing to one, gratuitous letter from an "uncomfortable" employee of the Human Resources Department), that because co-workers hold differing views on controversial public issues—views that clash based on Plaintiff's deeply-held religious beliefs—this alleged "discomfort" with those beliefs is sufficient to punish Plaintiff for expressing her beliefs *in public*. If that were the case, any time a government employee expressed his or her religious beliefs (outside of work, no less) and a co-worker disagreed (or was offended), that disagreement (or offense) would establish a basis for firing the speaking employee.

that homosexual employees might reconsider applying for a position at the University, thereby undermining the University's goals of diversity.[13] And finally, the district court concludes that Plaintiff's expression of her personal opinions in an op-ed in a local newspaper could somehow expose the University to lawsuits. That finding, like the previous two, is baseless. Indeed, Defendants provided scant evidence to support any of these wild and speculative claims, and yet the district court gave them full, if not excessive, weight in the balance despite the fact that all of the evidence showed, without contradiction, that Plaintiff *never* discriminated against anyone at the University (or elsewhere) nor did she ever say she would discriminate against anyone at the University (or elsewhere). In fact, the irrefutable evidence (*i.e.*, not hyperbolic speculation) showed that Plaintiff always had and always would enforce the University's non-discrimination polices—even if the University refused to do so itself.

3. Plaintiff's Personal Opinion Piece in the *Toledo Free Press* Was Not Written Pursuant to Any of Her Official Duties with the University.

There is no dispute that Plaintiff was expressing her personal opinion on a matter of public concern that was of great personal interest to her as a Christian, African-American woman. Plaintiff's opinion piece was not remotely authored

[13] For some reason, the district court appears totally incapable of recognizing the fact that Defendants' open hostility toward Plaintiff's religious beliefs would make Christians reconsider applying for positions at the University, thereby undermining "diversity."

pursuant to any of her official duties at the University. It was written on her own time, addressed to a public audience (*i.e.*, readership of the *Toledo Free Press*), and contained content unrelated to her government employment. *See Scarbrough*, 470 F.3d at 256.

In *Garcetti v. Ceballos*, 547 U.S. 410 (2006), the Court held that when a public employee makes statements *pursuant to* his official duties, such employees are not speaking as private citizens for First Amendment purposes, and thus the First Amendment does not prohibit managerial discipline of such employees for the speech. In *Garcetti*, the employee, a deputy district attorney, was fired for statements he made pursuant to his official duties as a prosecutor fulfilling a responsibility to advise his supervisor about how best to proceed with a pending criminal case—*a responsibility he was employed to fulfill*.[14] *Id*. at 421-22. The Court thus held that the statements were not protected speech because he was not speaking as a private citizen for purposes of the First Amendment. *Id.*

In contrast here, Plaintiff did not write her opinion piece as part of her official duties—it was not part of what she was employed to do. Rather, she acted as a private citizen by writing this article for a local newspaper. (R-71: Dixon Dep. at 155) ("I was writing as a private citizen on a Sunday from my home computer."). The district court properly concluded that Plaintiff's opinion piece

[14] It is important to note that the Court did not apply the *Elrod/Branti* exception in *Garcetti*. *Compare Latham,* 395 F.3d at 261.

was not written or published pursuant to any of her official duties. (R-79: Op. at 8).

B. Defendants' Adverse Action Against Plaintiff Would Deter a Person of Ordinary Firmness from Continuing to Engage in the Proscribed Conduct.

As the Supreme Court acknowledged, "[T]he threat of dismissal from public employment is . . . a potent means of inhibiting speech." *Pickering*, 391 U.S. at 574. Consequently, the *actual dismissal* from public employment for expressing a personal opinion and viewpoint operates as a strict prohibition on speech. By firing Plaintiff for expressing her personal opinion and viewpoint on a public issue—a personal opinion and viewpoint that apparently did not comport with the orthodoxy of opinion that the University seeks to enforce through strict punishment—the University has not only deterred Plaintiff, but it has fired a warning shot across the bow of any other employee who dares to express his or her personal (religious) opinions or viewpoints that might depart from the University's official orthodoxy.

C. Plaintiff's Expression of Her Personal Opinion and Viewpoint in the *Toledo Free Press* Was the Reason for Defendants' Adverse Actions.

Here, there is no question that Plaintiff was fired for expressing her personal opinion and viewpoint in the *Toledo Free Press*. (R-60: Jacobs Ltr., Pl.'s Ex. 12). This wasn't just a "motivating factor"—it was the factor. *See Scarbrough*, 470

F.3d at 255 ("In order for an employee to establish a claim of First Amendment retaliation, the employee must demonstrate that . . . the adverse action was motivated at least in part by his protected conduct."). Indeed, prior to writing the article and right up to the moment when she was fired, Plaintiff was performing her duties in an exceptional manner. Thus, the only reason Defendants terminated Plaintiff's employment was because she expressed her opinion and viewpoint on a matter of public concern in a local newspaper. (R-60: Jacobs Ltr., Pl.'s Ex. 12).

In conclusion, Defendants are liable for depriving Plaintiff of her clearly established constitutional right to freedom of speech.

IV. Defendants Maintain Unbridled Discretion to Punish Speech in Violation of the First Amendment.

Defendants maintain unbridled discretion to punish University employees for expressing disfavored opinions in violation of the First Amendment. There are no objective criteria for determining whether a particular opinion expressed by a University employee is sufficiently "offensive" or "discriminatory" to warrant its prohibition by terminating the speaker's employment. Defendants, who are government officials, have assumed unbridled discretion to determine which viewpoints are permitted and which are prohibited. This Circuit observed that "[t]he absence of clear standards guiding the discretion of the public official vested with the authority to enforce the [speech restriction] invites abuse by enabling the official to administer the policy on the basis of impermissible factors." *United*

Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Reg'l Transit Auth., 163 F.3d 341, 359 (6th Cir. 1998). As the Fourth Circuit explained, "[A]dministrators may not possess unfettered discretion to burden or ban speech, because 'without standards governing the exercise of discretion, a government official may decide who may speak and who may not based upon the content of the speech or viewpoint of the speaker.'" *Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. Five*, 470 F.3d 1062, 1068 (4th Cir. 2006) (quoting *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 763-64 (1988)). "Without determinate standards, *post hoc* rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine in any particular case whether the licensor is permitting favorable, and suppressing unfavorable, expression." *Id.* Furthermore, "[i]n a standardless environment, speakers might engage in self-censorship out of the fear they would be discriminated against based upon their views." *Id.*; *see also Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992) ("A government regulation that allows arbitrary application . . . has the potential for becoming a means of suppressing a particular point of view."); *R.A.V. v. St. Paul*, 505 U.S. 377, 386-92 (1992) (stating that the government may not "impose special prohibitions on those speakers who express views on disfavored subjects" or on the basis of "hostility—or favoritism—towards the underlying message expressed").

In this case, there are no objective, determinate standards to guide University officials (or to adequately warn University employees) in situations in which an employee's speech could be punished and result in his or her termination of employment in violation of the First Amendment.

V. Defendants Violated the Equal Protection Guarantee of the Fourteenth Amendment.

The district court's conclusion that Plaintiff has failed to sufficiently advance an equal protection claim is based upon a misapprehension of the law. (*See* R-79: Op. at 15-16). The relevant and applicable principle of law was articulated by the U.S. Supreme Court in *Police Dept. of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972): "[U]nder the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *See also Carey v. Brown*, 447 U.S. 455, 461-62 (1980). Here, University employees are permitted to express personal views in newspapers such as the *Toledo Free Press* or the *Toledo Blade*, so long as they are expressing an "acceptable" view in this forum. Defendants punished Plaintiff because she expressed a "less favored" viewpoint—one grounded in her strong Christian faith no less—in this very same forum in violation of the First Amendment (freedom of speech) and the Fourteenth Amendment (equal protection).

In sum, when government officials engage in discriminatory treatment based on the exercise of the fundamental right to freedom of speech they violate not only the First Amendment, but they also violate the equal protection guarantee of the Fourteenth Amendment.

VI. Defendants Are Not Entitled to Qualified Immunity.

Government officials are protected from personal liability for civil damages only so long as their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "This is not to say that an official action is protected by qualified immunity unless the very action in question has been previously held unlawful, but it is to say that in light of pre-existing law the unlawfulness must be apparent." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Plaintiff's right to be free from government retaliation for exercising her right to freedom of speech is clearly established. "Supreme Court decisions rendered long before the actions at issue in this case recognize that government actions may not retaliate against an individual for the exercise of protected First Amendment freedoms." *Dietrech v. Burrows*, 167 F.3d 1007, 1013 (6th Cir. 1999); *Ctr. for Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 824-25 (6th Cir. 2007) (same). Consequently, it would be error to grant Defendants

qualified immunity in this case because Plaintiff's right to be free from retaliation by her government employer for publishing a personal opinion piece in a local newspaper on a matter of public concern was clearly established. *See Pickering*, 391 U.S. at 563.

CONCLUSION

Plaintiff respectfully requests that this court reverse the grant of summary judgment in Defendants' favor, reverse the denial of her motion for summary judgment, and enter judgment in her favor as to liability on all claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 32(a)(7), the foregoing Brief is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 8,476 words, excluding those sections identified in Fed. R. App. P. 32(a)(7)(B)(iii).

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

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ADDENDUM: DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Record No.	Description
R-1	Complaint
R-57	Second Amended Complaint
R-60	Plaintiff's Motion for Summary Judgment
	Exhibit 1 Defendant Logie Deposition (excerpts)
	Exhibit 2 Plaintiff Dixon's Personal Evaluations for 1/1/05 and 12/31/05
	Exhibit 3 Plaintiff Dixon's Personal Evaluations for 1/7/02 and 1-31-03
	Exhibit 4 Defendant Jacobs Deposition (excerpts)
	Exhibit 5 Plaintiff Dixon Deposition (excerpts)
	Exhibit 6 Miller Op-Ed
	Exhibit 7 Plaintiff Dixon's Op-Ed (email format)
	Exhibit 8 Plaintiff Dixon's Op-Ed (published format)
	Exhibit 9 Plaintiff Dixon's Memo to Defendant Jacobs
	Exhibit 10 Defendant Jacobs' Op-Ed
	Exhibit 11 Rubin Letter dated 4-21-08
	Exhibit 12 Defendant Jacobs Letter dated 5-8-08
	Exhibit 13 Breshnahan Article
	Exhibit 14 Wedding Deposition (excerpts)

R-65	Defendant Jacobs Deposition
R-66	Defendant Jacobs Deposition
R-68	Defendant Logie Deposition
R-71	Defendants' Motion for Summary Judgment
	Supplement C: Plaintiff Dixon Deposition (excerpts)
R-79	Memorandum Opinion Denying Plaintiff's Motion for Summary Judgment and Granting Defendants' Motion for Summary Judgment
R-80	Judgment
R-84	Notice of Appeal