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

PETITION FOR REHEARING EN BANC

JAMES R. ACHO, ESQ.
CUMMINGS, MCCLOREY, DAVIS & ACHO
33900 SCHOOLCRAFT
LIVONIA, MI 48150
(734) 261-2400

THOMAS A. SOBECKI, ESQ.
405 MADISON AVENUE, SUITE 910
TOLEDO, OH 43604
(419) 242-9908

ROBERT JOSEPH MUISE, ESQ.
AMERICAN FREEDOM LAW CENTER
P.O. BOX 131098
ANN ARBOR, MI 48113
(734) 635-3756

ERIN ELIZABETH MERSINO, ESQ.
THOMAS MORE LAW CENTER
P.O. BOX 393
ANN ARBOR, MI 48106
(734) 827-2001

Attorneys for Plaintiff-Appellant

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PRELIMINARY STATEMENT

Plaintiff Crystal Dixon was fired from her employment as Associate Vice President for Human Resources with the University of Toledo because she expressed her personal, Christian views as a private citizen in an opinion piece published in the *Toledo Free Press.* Plaintiff did not occupy a political position nor did she publicly criticize *any identified policy* of her employer in her writing. Rather, Plaintiff was fired for expressing her *personal religious beliefs* in a local newspaper on a very controversial issue: gay rights.[1]

As the U.S. Supreme Court has long 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." *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added). In this case, that "fixed star" in our constitutional constellation has been obscured and an official orthodoxy prescribed in violation of the First Amendment.

REASONS FOR GRANTING THE PETITION

A rehearing en banc is appropriate because this case involves questions of exceptional importance that should be decided by the full court. *See* Fed. R. App. P. 35(b)(1)(B). In particular, the court should decide whether to discard or modify

[1] To assist the court, the petition includes an addendum with Plaintiff's opinion piece (ADD-1), the op-ed to which she was responding (ADD-3), and the opinion piece written by Defendant Jacobs, the University President, in which he "repudiate[s]" Plaintiff's opinions and religious views (ADD-5).

the presumption adopted by this Circuit in *Rose v. Stephens*, 291 F.3d 917 (6th Cir. 2002), that expands the *Elrod-Branti* policymaker exception analysis to include cases where a policymaking employee is terminated for expressive conduct even though political affiliation was not at issue. Or, in the alternative, the court should decide whether such a presumption should be *narrowly* construed so as to provide some protection for the free speech rights of government employees, particularly in light of the facts and circumstances of this case.

The U.S. Courts of Appeals are divided on whether a presumption in favor of the government should exist in employee speech cases that do not involve political patronage, such as the one at issue. The courts that have adopted such a presumption eschew the balancing test set forth in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), and thus accord no weight to the First Amendment issues at stake.

As noted, this Circuit has adopted such a presumption, which favors the government as a matter of law when the employee holds a "policymaking or confidential" position based on four, loosely applied categories, and "where the employee's speech relates to either his political affiliation or substantive policy." *Rose*, 291 F.3d at 921.

Plaintiff contends that the full court should reconsider this presumption in light of how it was applied in this case to punish core political speech and in light of *Garcetti v. Ceballos*, 547 U.S. 410, 413 (2006), which would call for a different

analysis if the *Rose* case were decided today. At a minimum, the full court should consider refining the *Rose* presumption so that it applies *narrowly* in order to protect the fundamental right of a private citizen to speak on controversial, public issues—speech that rests on the "highest rung of the hierarchy of First Amendment values." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (recognizing "that expression on public issues 'has always rested on the highest rung of the hierarchy of First Amendment values'") (citations omitted). And that is particularly so when, as here, the speech in question *did not directly address nor criticize any specific policy* of the government employer but instead represented a personal religious view and opinion on a controversial public issue. Here, Plaintiff was fired because her personal religious beliefs did not comport with the University's "diversity" values. In fact, Plaintiff's speech was in response to a published editorial—it was not in response to anything her employer did or did not do. As Defendants acknowledged in their brief, the only part of Plaintiff's speech that remotely touched upon University policies "was arguably supportive of the University." (Defs.' Br. at 46)

Unfortunately, the panel gave Plaintiff's speech—and the opinions expressed in that speech—*no consideration* and instead held in favor of the government as a matter of law based on the presumption set forth in *Rose*. (Op. at 12 ["Because the *Rose* presumption is dispositive, it is unnecessary for us to

consider the district court's *Pickering* and *Garcetti* analyses."]).[2] That result does not comport with (nor provide any protection for) the values enshrined in the First Amendment. *See generally NAACP v. Button*, 371 U.S. 415, 433 (1963) (observing that First Amendment "freedoms are delicate and vulnerable, as well as supremely precious in our society").

Consequently, it is important to bear in mind when reviewing this case that 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*, 547 U.S. at 413 (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). Thus, it is against this backdrop and with a general understanding of the importance the First Amendment plays in our civilized society that this court should consider rehearing this case.

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[2] There is no dispute that Plaintiff was speaking on a matter of public concern and was thus terminated as a result of her speech. (*See* Op. at 7 [stating that "[o]nly the first element, whether the speech was protected, is at issue on appeal" and that "the parties do not dispute that Dixon spoke on a matter of public concern"]). And there is no reasonable dispute that when Plaintiff was writing her opinion piece on her personal computer from her home on a Sunday, she was not speaking pursuant to her official duties with the University, but as a private citizen. (R-71: Dixon Dep. at 155). Indeed, the district court properly concluded that Plaintiff's opinion piece was not written or published pursuant to any of her official duties. (R-79: Op. at 8).

I. The *Rose* Presumption Does Not Protect the Fundamental Right to Freedom of Speech and Should Be Discarded or Refined.

The *Rose* presumption represents an extension of Supreme Court precedent as enunciated in *Elrod v. Burns*, 427 U.S. 347 (1976) and *Branti v. Finkel*, 445 U.S. 507 (1980), in which the Court established that the termination of a government employee based on the employee's political affiliation in political patronage cases is permissible under the First Amendment. The *Rose* presumption extends the *Elrod*/*Branti* line of reasoning beyond political patronage cases to include those involving "policymaking or confidential" positions. Accordingly, the *Rose* presumption eschews the balancing required under *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), and favors the government as a matter of law.

More precisely, in *Rose v. Stephens*, 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." *Rose*, 291 F.3d at 921. The rule adopted applies "where the employee's speech relates to either his political affiliation or substantive policy." *Id*.

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 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 the *total* discretionary authority available to category one position-holders 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 communication" to such persons; and (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 (emphasis added).

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*") (emphasis added).

Indeed, the very case that established the presumption (*Rose v. Stephens*) would be analyzed differently today in light of *Garcetti v. Ceballos*, 547 U.S. 410 (2006). In *Garcetti*, the Court held that when public employees make statements pursuant to their official duties, such employees are not speaking as private citizens for First Amendment purposes and thus may be disciplined 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 to advise his supervisor about how best to proceed with a pending criminal case.[3] *Id*. at 421-22. The Court held that the statements were not protected speech because the deputy district attorney was not speaking as a private citizen for purposes of the First Amendment. *Id*.

Pursuant to the reasoning in *Garcetti*, the memorandum submitted to the Secretary and the Governor of Kentucky at issue in *Rose* and the letter to the Attorney General at issue in *Latham* would not be protected speech under the First Amendment. Consequently, *Garcetti* addresses the concerns at issue in *Rose* and those in *Latham*, thus further demonstrating the need to reconsider the *Rose* presumption, particularly in light of the facts of this case.

As discussed below, the U.S. Courts of Appeals are not uniform in their application of such a presumption in cases that do not involve political patronage. Adopting such a presumption outside of the political patronage context—and certainly, broadly applying such a presumption as in this case—runs contrary to our national commitment to protect the fundamental right to freedom of speech on public issues. *See N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964) (acknowledging "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open").

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

For example, the Eighth Circuit, which refused "to expand the *Elrod-Branti* exception to a case where party affiliation is not alleged as a basis for the termination," "decline[d] to follow all aspects of *Rose*." *Hinshaw v. Smith*, 436 F.3d 997, 1006 (8th Cir. 2006). Instead, the Eighth Circuit agreed "with those circuits that conclude that the employee's status as a policymaking or confidential employee weighs heavily on the government's side of the *Pickering* scale when the speech concerns the employee's political or substantive policy views related to her public office." *Id*. at 1007. And in *Lewis v. Cowen*, 165 F.3d 154, 162 (2d Cir. 1999), the Second Circuit stated, "Although it is true that, consistent with the First Amendment, a policymaking employee may be discharged on the basis of political affiliation such as membership (or lack of membership) in a particular political party, that same employee may not be discharged on the basis of specific speech on matters of public concern unless the *Pickering* balancing test favors the government employer." *See also McEvoy v. Spencer*, 124 F.3d 92, 101, 102-03 (2d Cir. 1997) (rejecting *Elrod* and applying *Pickering* when a policymaking employee is discharged solely for speaking on a matter of public concern and political affiliation is not an issue); *Curinga v. City of Clairton*, 357 F.3d 305, 314 (3d Cir. 2004) (stating that "when an employee's speech is intermixed with political affiliation, the *Pickering* balancing standard is the better analysis to apply"). As the Eight Circuit further observed, "The Supreme Court has also

indicated that where speech is intermixed with a political affiliation requirement, *Pickering* balancing is appropriate." *Hinshaw*, 436 F.3d at 1005-06 (citing *O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 718-19 (1996)); *Barker v. City of Del City*, 215 F.3d 1134, 1139 (10th Cir. 2000) (observing that the Supreme Court in *O'Hare Truck Serv., Inc.* implicitly rejected the position that a "political affiliation" employee can be terminated for her speech without considering the *Pickering* balancing factors).

By employing the *Rose* presumption, the panel rejected any balancing that would give weight to Plaintiff's speech, thereby ignoring the great social value of her speech and thus implicitly rejecting the values safeguarded by the First Amendment. 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 current gay-rights movement. *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.*

II. Alternatively, the *Rose* Presumption Should Be Construed Narrowly so as to Avoid Sweeping Away First Amendment Values.

In order for the *Rose* presumption to apply, Plaintiff "must (1) hold a confidential or policymaking position, and (2) have spoken on a matter related to political or policy views." (Op. at 8); *see Rose*, 291 F.3d at 921.

As the panel noted, "there is no clear line drawn between policymaking and non-policymaking positions." (Op. at 8). However, this lack of clarity should be *narrowly construed* in favor of protecting the public employee who is speaking as a private citizen on a matter of public concern and not broadly construed, as the panel did here, to favor the government employer that is intent on suppressing the employee's speech. In light of the importance of the First Amendment in our society, *see, e.g., Claiborne Hardware Co.*, 458 U.S. at 913 ("[Speech] concerning public affairs is more than self-expression; it is the essence of self-government.") (citations omitted); *Stromberg v. Cal.*, 283 U.S. 359, 369 (1931) ("The maintenance of the opportunity for free political discussion . . . is a fundamental principle of our constitutional system."); *N.Y. Times*, 376 U.S. at 270 (acknowledging our "profound national commitment" to "uninhibited, robust, and wide-open" debate on public issues), presumptions should be construed in favor of protecting—and not suppressing—political speech.

With regard to the first prong, the panel's broad reading of the four categories of policymaking positions set forth in *Rose* so as to fit Plaintiff's position within category two is problematic. (*See* Op. at 10 [concluding that Plaintiff "was a category-two policymaker"]). There is no dispute that the policymaker for the University is the Board of Trustees. 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). And, according to *Rose*, a "category-two" position is one in which a "*significant portion* of the *total* discretionary authority"' of a category-one position-holder has been delegated. *Rose*, 291 F.3d at 924 (emphasis added). The *only* position that fits that description is the position of University President, which, "[p]ursuant to rule 3364-1-07 of the Administrative Code, the Board of Trustees has delegated the authority and responsibility for the internal administration of the University." (Doc. No. 71-3). Clearly, Plaintiff possesses no such authority. Consequently, a fair reading of the four categories to which the *Rose* presumption applies demonstrates that it should not apply to Plaintiff in this case. More important, a narrow reading of these categories would also yield this result—a result that favors the private speaker over the government censor, as it should be in our constitutional democracy.

The second prong of the *Rose* presumption requires the policymaking employee's speech to be "related to his political or policy views." *Rose*, 291 F.3d at 921; *see also Silberstein*, 440 F.3d at 319-20. The speech at issue here, however, 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 newspaper. 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. 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 was to correct a misstatement of fact in the prior editorial. (*See* ADD-1 [R-60-9]) ("The reference to the alleged benefits disparity at the University of Toledo was rather misleading.").[4] Indeed, Plaintiff affirmed 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 fact, in the very opinion piece that caused her termination, Plaintiff expressed her firm conviction that all persons should be treated equally and with dignity, stating, "[H]uman beings, regardless of their choices in life, are of ultimate value to God and should be viewed the same by

[4] 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).

other humans" and "Jesus Christ loves the sinner but hates the sin as seen in John 8:1-11." (ADD-1 to ADD-2 [R-60-9]).

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 question that Plaintiff was speaking as a private citizen, not as an employee, on a matter of public concern. This speech must be accorded the greatest weight on the *Pickering* scale and not presumptively dismissed, as the panel did here, thus allowing a government employer to suppress speech based on a broad rendering of its "diversity" values.

In sum, 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, the University President, Defendant Jacobs, was permitted to express his *personal* and controversial opinions on the very same subject in the *Toledo Free Press* without being punished for doing so. (*See* Add-5 [R-60-11]) ("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. In fact, 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—promotes the University's interests as well. *See, e.g., Healy v. James*, 408 U.S. 169, 180 (1972) (observing that "American schools" are "peculiarly the 'marketplace of ideas'"); *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003) ("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."). Indeed, 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 First Amendment.

CONCLUSION

Plaintiff respectfully requests that the court grant this petition, vacate the panel's opinion, and reverse the district court's order denying Plaintiff's partial motion for summary judgment as to liability and granting Defendants' motion for summary judgment.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

By: /s/ Robert J. Muise
Robert J. Muise, Esq.

CUMMINGS, MCCLOREY, DAVIS & ACHO

By: /s/ James Acho
James Acho, Esq.

LAW OFFICE OF THOMAS A. SOBECKI

By: /s/ Thomas A. Sobecki
Thomas A. Sobecki, Esq.

THOMAS MORE LAW CENTER

By: /s/ Erin Mersino
Erin Mersino, Esq.

Attorneys for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 35, the foregoing petition does not exceed 15 pages, excluding material not counted under Fed. R. App. P. 32.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 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.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.

ADDENDUM

4/16/2008

OPINION

GUEST OPINION

Gay rights and wrongs: another perspective

By Crystal Dixon

I read with great interest Michael Miller's April 6 column, "Gay Rights and Wrongs."

I respectfully submit a different perspective for Miller and *Toledo Free Press* readers to consider.

First, human beings, regardless of their choices in life, are of ultimate value to God and should be viewed the same by others. At the same time, one's personal choices lead to outcomes either positive or negative.

As a Black woman who happens to be an alumnus of the University of Toledo's Graduate School, an employee and business owner, I take great umbrage at the notion that those choosing the homosexual lifestyle are "civil rights victims." Here's why. I cannot wake up tomorrow and not be a Black woman. I am genetically and biologically a Black woman and very pleased to be so as my Creator intended. Daily, thousands of homosexuals make a life decision to leave the gay lifestyle evidenced by the growing population of PFOX (Parents and Friends of Ex Gays) and Exodus International just to name a few. Frequently, the individuals report that the impetus to their change of heart and lifestyle was a transformative experience with God; a realization that their choice of same-sex practices wreaked havoc in their psychological and physical lives. Charlene E. Cothran, publisher of Venus Magazine, was an aggressive, strategic supporter of gay rights and a practicing lesbian for 29 years, before she renounced her sexuality and gave Jesus Christ stewardship of her life. The gay community vilified her angrily and withdrew financial support from her magazine, upon her announcement that she was leaving the lesbian lifestyle. Rev. Carla Thomas Royster, a highly respected New Jersey educator and founder and pastor of Blessed Redeemer Church in Burlington, NJ, married to husband Mark with two sons, bravely exposed her previous life as a lesbian in a tell-all book. When asked why she wrote the book, she responded "to set people free... I finally obeyed God."

Economic data is irrefutable: The normative statistics for a homosexual in the USA include a Bachelor's degree: For gay men, the median household income is $83,000/yr. (Gay singles $62,000; gay couples living together $130,000), almost 80% above the median U.S. household income of $46,326, per census data. For lesbians, the median household income is $80,000/yr. (Lesbian singles $52,000; Lesbian couples living together $96,000); 36% of lesbians reported household incomes in excess of $100,000/yr. Compare that to the median income of the non-college educated Black male of $30,539. The data speaks for itself.

The reference to the alleged benefits disparity at the University of Toledo was rather misleading. When the University of Toledo and former Medical University of Ohio merged, both entities had multiple contracts for different benefit plans at substantially different employee cost sharing levels. To suggest that homosexual employees on one campus are being denied benefits avoids the fact that ALL employees across the two campuses regardless of their sexual orientation, have different benefit plans. The university is working diligently to address this issue in a reasonable and cost-efficient manner, for all employees, not just one segment.

My final and most important point. There is a divine order. God created human kind male and female

Jacobs
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(Genesis 1:27). God created humans with an inalienable right to choose. There are consequences for each of our choices, including those who violate God's divine order. It is base human nature to revolt and become indignant when the world or even God Himself, disagrees with our choice that violates His divine order. Jesus Christ loves the sinner but hates the sin (John 8:1-11.) Daily, Jesus Christ is radically transforming the lives of both straight and gay folks and bringing them into a life of wholeness: spiritually, psychologically, physically and even economically. That is the ultimate right.

Crystal Dixon lives in Maumee.

4/4/2008

OPINION

LIGHTING THE FUSE

Michael S. Miller

Gay rights and wrongs

By Michael S. Miller
Editor in Chief
mmiller@toledofreepress.com

One of the great blessings of my life is the consistent, long-term presence of many friends. There are three very important people who have been in my life since first or second grade. More than a dearth of blood relatives makes those people my family; we have shared 30 years of ups and downs on the dizzying carousel ride of life.

Two of those people, and my closest blood relative, are gay.

I have been tangentially immersed in the gay culture for so long, it's a natural and common aspect of life. Three decades of loving these friends and family and sharing their successes in managing careers and raising families has jaded me to the hatred and prejudice many people harbor against the gay community. It's easy for me to let my guard down and take gay culture for granted. As a middle-aged, overweight white guy with graying facial hair, I am America's ruling demographic, so the gay rights struggle is something I experience secondhand, like my black friends' struggles and my wheelchair-bound friend's struggles.

In the interest of full disclosure, at least three women I dated in college subsequently declared themselves gay, so I've directly contributed to the community's growth.

Because I have such intense love and respect for the people in my life who are gay, it never makes sense to me when I hear someone preaching anti-gay rights propaganda. I can never understand why they care.

It's basic Golden Rule territory: don't judge people for the color of their skin or their physical challenges, and don't judge them for their sexuality. I know that is a simplified and naïve statement, but for me, the issue really is that simple. There are people who are so strongly anti-gay rights, they lust for legislation to limit the gay community's freedoms. That makes no intellectual or moral sense to me. Some of this prejudice is based in religion. I find it confusing that people who believe in a savior who opens his arms to everyone think he'll draw those same arms shut to keep gay people away.

And do not tell me you are "tolerant" or "tolerate" gay people. Stop for a moment and think about how condescending and evil that attitude is.

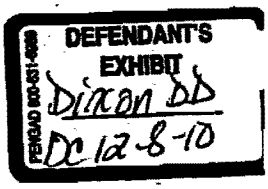
Every month, some anonymous reader sends me a packet of articles photocopied from newspapers. These articles are about gay rights, marked up with a red pen that bleeds exclamation points with scrawls of "HIV" and "AIDS Doom" all over them: I recognize the envelope now, and it lands, unopened, in the trash.

On March 26, I moderated a town hall meeting sponsored by Equality Ohio and Equality Toledo. The meeting, "A Level Playing Field," dealt with issues of employment discrimination against gay people. It was lightly attended, but the attendees, including a couple who drove from Youngstown, were clearly invested in the issue. The panelists were Michelle Stecker, attorney and interim executive director of Equality Toledo; Kim Welter, program manager for education and outreach for Equality Ohio; and Rob Salem, a clinical professor of law at the UT College of Law.

There were many interesting discussions, and I learned a lot about Ohio's gay rights laws, or lack thereof. I left the forum with a vague sadness — sadness that there is so much needless public struggle and strife based on something as private as sexuality, and sadness that I have been ignorant to the struggles some of my closest friends endure.

One message that came through was how far behind Ohio is in gay rights. A single gay Ohioan may adopt a child, but a gay Ohio couple cannot. A gay couple may raise a child, but if something happens to the biological parent or primary caregiver, the partner may find him or her self without legal access to the child.

The frequent denial of health care benefits leads to horror stories. According to the panelists, UT has offered domestic partner benefits since then-president Dan Johnson signed them into effect. The



Medical University of Ohio did not offer those benefits. When the institutions merged, UT employees retained the domestic-partner benefits, but MUO employees were not offered them. So, people working for the same employer do not have access to the same benefits. According to the panel, it may be 18 months before the situation is addressed. Eighteen months is a very long time to live (and work at a medical facility) without health benefits.

Ohio's policies have a direct impact on economic development. The panelists have specific examples of companies who will not consider locating in Ohio because they have gay employees who would lose benefits.

There have been studies that show how much states benefit economically from offering equal rights, and how much money is left on the table by states that put prejudice before profit. It would be in the best interest of the local Meta-Plan groups to host a presentation by Equality Ohio to learn just how great our competitive disadvantage is.

It's a sad irony that I embrace so many gay people without fully understanding their challenges; as the people who know me best could tell you, I'm on a very long learning curve. But I'm willing to learn.

Are you?

GUEST COLUMN

UT protects gay rights

Dr. Lloyd JACOBS

I write to clarify the position of the University of Toledo on certain comments made in Michael S. Miller's April 5 column, "Gay Rights and Wrongs," and also to repudiate comments made subsequently in an April 19 online writing, "Gay rights and wrongs: Another perspective," by Ms. Crystal Dixon.

Although I recognize it is common knowledge that 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 and to make this attempt to clarify our values system. The Strategic Plan of the University of Toledo states certain "Core Values." Among them are "Diversity, Integrity and Teamwork." The document further states that we "create an environment that values and fosters diversity; earn the trust and commitment of colleagues and the communities served; provide a collaborative and supportive work environment, based upon stewardship and advocacy, that adheres to the highest ethical standard."

Recently I have supported the revival of a Safe Places Program at the University of Toledo. Our Spectrum student group created the Safe Places Program to "invite faculty, staff and graduate assistants and resident advisers to open their space as a Safe Place for Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning [LGBATQ] individuals." I took this action because I believe it to be entirely consistent with the values system of the university. Indeed, there is a Safe Places sticker on the door of the President's office at the University of Toledo.

I have recently written a letter to the legislatures of the state of Ohio, on behalf of the University of Toledo, to support Senate Bill 305 and House Bill 502. Those legislative initiatives extend to domestic partners a number of rights and privileges which I believe are assured by the constitutional rights of everyone in our state. My letter of support is dated April 30, 2008 and is available through my office to any interested party.

The University of Toledo welcomes, supports and places value upon persons of every variety. Disability, race, age or sexual orientation are not included in any decision making process nor the evaluation of worth of any individual at this university. To the extent that appearances may exist which are contrary to this value statement, we will continue to do everything in our power to align all of our actions every day with the value system discussed.

We will be taking certain internal actions in this instance to more fully align our utterances and actions with this value system.

As regards the continued asymmetry of benefits packages across the campuses of this university, do understand that we are fully aware that asymmetry that Michael S. Miller spoke of does exist and are working as rapidly as we can to correct this asymmetry. When this asymmetry is corrected, the solution will be reflective of the university value statements above.

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."

Dr. Lloyd Jacobs is president of the University of Toledo.