

No. 12-1402

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**In the  
Supreme Court of the United States**

CRYSTAL DIXON,

*Petitioner,*

v.

UNIVERSITY OF TOLEDO, ET AL.,

*Respondents.*

*On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Sixth Circuit*

**BRIEF OF AMICI CURIAE ALLIANCE DEFENDING  
FREEDOM AND PACIFIC JUSTICE INSTITUTE IN  
SUPPORT OF PETITIONER**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTEREST OF *AMICI CURIAE* ..... 1

SUMMARY OF THE ARGUMENT ..... 3

ARGUMENT ..... 5

I. This Case Is a Good Vehicle to Clarify that  
a Public Employee May Express Opinions  
Outside the Workplace that Contradict Her  
Employer’s Values. .... 5

II. The Sixth Circuit’s Decision Empowers  
Government Employers to Impose Political  
Litmus Tests on Employees. .... 11

III. *Amici Are* Aware of a Growing Trend in  
Higher Education to Require Students,  
Faculty, and Staff to Swear Public  
Allegiance to Ideas with which They  
Disagree as a Condition of Employment or  
Graduation. .... 18

CONCLUSION ..... 21

**TABLE OF AUTHORITIES**

**Cases:**

<i>Adams v. Trustees of University of North Carolina -Wilmington,</i> 640 F.3d 550 (4th Cir. 2011) .....	20
<i>Agency for International Development v. Alliance for Open Society International, Inc.,</i> No. 12-10, --- S. Ct. ---, 2013 WL 3064411, at *6 (June 20, 2013).....	11
<i>Baird v. State Bar of Arizona,</i> 401 U.S. 1 (1971).....	11
<i>Branti v. Finkel,</i> 45 U.S. 507 (1980).....	13
<i>Cole v. Richardson,</i> 405 U.S. 676 (1972).....	11
<i>Connell v. Higginbotham,</i> 403 U.S. 207 (1971).....	11
<i>Connick v. Myers,</i> 461 U.S. 138 (1983).....	4, 7, 12
<i>DeJohn v. Temple University,</i> 537 F.3d 301 (3d Cir. 2008) .....	5
<i>Elrod v. Burns,</i> 427 U.S. 347 (1976).....	13
<i>Garcetti v. Ceballos,</i> 547 U.S. 410 (2006).....	4, 6, 8, 10, 16

<i>Keyishian v. Board of Regents of University of State of New York,</i> 385 U.S. 589 (1967).....	5, 15, 18
<i>Law Students Civil Rights Research Council v. Wadmond,</i> 401 U.S. 154 (1971).....	11
<i>McDaniel v. Paty,</i> 435 U.S. 618 (1978).....	16
<i>Parate v. Isibor,</i> 868 F.2d 821 (6th Cir. 1989) .....	18
<i>Peacock v. Duval,</i> 694 F.2d 644 (9th Cir. 1982) .....	17
<i>Pickering v. Board of Education of Township High School District 205,</i> 391 U.S. 563 (1968).....	4, 6, 9, 10, 17
<i>Rose v. Stephens,</i> 291 F.3d 917 (6th Cir. 2002) .....	10, 12, 13
<i>Sweezy v. New Hampshire,</i> 354 U.S. 234 (1957).....	15
<i>Torcaso v. Watkins,</i> 367 U.S. 488 (1961).....	15, 16
<i>United States v. National Treasury Employees. Union,</i> 513 U.S. 454 (1995).....	4, 6

<i>West Virginia State Board of Education v. Barnette</i> , 319 U.S. 624 (1943).....	4, 13, 14, 18, 19
<i>Ward v. Polite</i> , 667 F.3d 727 (6th Cir. 2012) .....	19
<i>Wieman v. Updegraff</i> , 344 U.S. 183 (1952).....	12

**Other Authorities:**

Eric L. Dey, et al., <i>Engaging Diverse Viewpoints: What is the Campus Climate for Perspective-Taking?</i> 16 (Ass'n of Am. Coll. & Univ. ed., 2010), <a href="http://www.aacu.org/core_commitments/documents/Engaging_Diverse_Viewpoints.pdf">http://www.aacu.org/core_commitments/ documents/Engaging_Diverse_Viewpoints.pdf</a> .....	20
Jenna Johnson, <i>Gallaudet Diversity Officer on Paid Leave After Signing Petition on Same-Sex Marriage Law</i> , WASH. POST, Oct. 10, 2012, <a href="http://www.washingtonpost.com/local/education/gallaudet-diversity-officer-on-paid-leave-after-signing-petition-on-same-sex-marriage-law/2012/10/10/bdb1e720-1332-11e2-a16b-2c110031514a_story.html">http://www.washingtonpost.com/local/education/gallaudet-diversity-officer-on-paid-leave-after-signing-petition-on-same-sex-marriage-law/2012/10/10/bdb1e720-1332-11e2-a16b-2c110031514a_story.html</a> .....	20
Debra J. Saunders, <i>Academic Mission or UCLA Speech Code?</i> , S.F. CHRON., Apr. 11, 2011, <a href="http://www.sfgate.com/opinion/saunders/article/Academic-mission-or-UCLA-speech-code-2375264.php">http://www.sfgate.com/opinion/saunders/article/Academic-mission-or-UCLA-speech-code-2375264.php</a> ....	20

**INTEREST OF *AMICI CURIAE***<sup>1</sup>

Alliance Defending Freedom is a non-profit, public interest legal organization that provides strategic planning, training, funding, and direct litigation services to protect our first constitutional liberty—religious freedom. Since its founding in 1994, Alliance Defending Freedom has played a role, either directly or indirectly, in many cases before this Court, including: *Town of Greece v. Galloway*, 681 F.3d 20 (2d Cir. 2012), *cert. granted*, 81 U.S.L.W. 3336 (U.S. May 20, 2013) (No. 12-696); *Arizona Christian School Tuition Organization v. Winn*, 131 S. Ct. 1436 (2011); *Christian Legal Society v. Martinez*, 130 S. Ct. 2971 (2010); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Good News Club v. Milford Central School*, 533 U.S. 98 (2001); *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000); and *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995); as well as hundreds more in lower courts.

Many of these cases involve the proper application of the Free Speech Clause in the educational context. Dissenting students, faculty,

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<sup>1</sup> The parties granted mutual consent to the filing of *amicus curiae* briefs in support of either party or of neither party pursuant to S. Ct. R. 37.3(a). Documentation reflecting the parties' mutual consent agreement has been filed with the Clerk. *Amici* also obtained written consent from the parties to file this brief pursuant to S. Ct. R. 37.2(a). Pursuant to S. Ct. R. 37.6, *amici* state that no counsel for any party authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

and staff at public schools and universities are often victims of unlawful retaliation because of their protected expression. Recognizing that the Court's decision in this case could have an adverse impact on the ability of public employees to comment on matters of public concern, Alliance Defending Freedom seeks to ensure that the First Amendment's guarantee of religious free speech is safeguarded in the public square and higher education.

Pacific Justice Institute (PJI) is a non-profit 501(c)(3) legal organization that is dedicated to defending religious liberties and rights of conscience. PJI has advised and represented countless individuals and entities, including both employers and employees, as to their rights in the workplace. PJI advocates and litigates to ensure robust freedom of speech for public employees. PJI's past, present and future clients will be directly and adversely impacted by rulings that restrict free speech in public employment. PJI also advises and represents clients in a variety of academic settings, from elementary to post-secondary. Specifically, PJI has litigated and advocated on behalf of both students and faculty members to ensure freedom of speech, academic freedom, freedom of the press, and procedural due process in the educational context. PJI's clients will be directly and negatively impacted by rulings that restrict robust and open debate, particularly in higher educational contexts that have traditionally embodied the marketplace of ideas.

### SUMMARY OF THE ARGUMENT

Petitioner Crystal Dixon, as a citizen living in Ohio, wanted to contribute to a public discussion about race, sexuality, and politics. When she read an editorial in a local newspaper that compared the “gay rights struggle” to the Civil Rights Movement of the 1950s and 1960s, Dixon, an African-American woman, believed she could provide a counterpoint. She authored a short op-ed responding to the editorial and explaining her experiences. She signed it with her name and city of residence.

What she did not say, and what was entirely irrelevant to her op-ed, was that she worked for the University of Toledo in the human resources department. She did not mention this fact because she wrote her op-ed as a citizen, not as an employee of the university. She believed that despite her public employment, she could speak freely and publicly as a citizen on an issue relevant to her community. Her employer disagreed.

Respondents fired Dixon for writing the op-ed, because they deemed it not in “accord” with the “values” of the University of Toledo. They ignored that she wrote as a citizen and it was the university who publicly exposed her as an employee. In Respondents’ view, any public disagreement with the university’s values, even though those values were neither the subject of the original editorial nor Dixon’s op-ed, warranted Dixon’s dismissal from employment.

When Dixon sued, the Sixth Circuit rejected her First Amendment claim, and found that her status as a public employee in the human resources



department of the university validated the government's ability to silence her speech inside and outside the workplace. In doing so, the Sixth Circuit ignored seventy years of precedent establishing that 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 or force citizens to confess by word or act their faith therein." *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

"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)); *see also United States v. Nat'l Treasury Emp. Union*, 513 U.S. 454, 465 (1995) ("Even though respondents work for the Government, they have not relinquished 'the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest.'").

The Sixth Circuit classified Dixon as a policymaker and held she had no right to free speech, even as a citizen speaking on a matter of public concern. But the Sixth Circuit ignored the direct parallels between this case and Marvin Pickering's letter to the editor that this Court held was protected speech, even though Pickering criticized the policies of his public school employers and Dixon did not. *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563 (1968).

By broadly applying the policymaker doctrine, the Sixth Circuit's decision below also empowers government employers to impose loyalty oaths and litmus tests on employees. This Court has rejected such restraints on speech for decades. Left untouched, the Sixth Circuit's decision will revive loyalty oaths for public employers.

Finally, *Amici* are well-aware that cases like Dixon's are becoming all too frequent. There is a growing trend in higher education to require students, faculty, and staff to swear public allegiance to ideas those people disagree with, whether as a condition of obtaining a degree or maintaining employment. Dixon's petition presents a good opportunity for this Court to end these practices and restore free speech on campus, which "is the lifeblood of academic freedom," *DeJohn v. Temple Univ.*, 537 F.3d 301, 314 (3d Cir. 2008), and the foundation for the "marketplace of ideas," *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

## ARGUMENT

### **I. This Case Is a Good Vehicle to Clarify that a Public Employee May Express Opinions Outside the Workplace that Contradict Her Employer's Values.**

This Court held recently that when a public employee makes statements pursuant to his official duties, as determined by the particular circumstances of his job, the employee is not speaking as a citizen, and the First Amendment does not insulate his speech from employer discipline.

*Garcetti*, 547 U.S. at 421. But outside those job duties, the First Amendment still protects the right of public employees to speak as citizens on matters of public concern. *Pickering*, 391 U.S. 563. The Sixth Circuit’s ruling below contradicts that precedent and deprived Dixon of First Amendment protection. This case is a good vehicle to clarify that public employees may still speak freely when off-duty.

In *Pickering v. Board of Education*, a high school fired a teacher for sending a letter to a local newspaper that criticized the school board’s financial policies. 391 U.S. at 566. The teacher wrote the letter after others in the community, including the teachers’ union and superintendent, wrote letters supporting a new tax proposal on the ballot. *Id.* The signature block on Pickering’s letter did not identify him as a school employee, though he indicated that the administration forbade teachers from commenting on the tax proposal. *Id.* at 578.

This Court held that when addressing the free speech rights of public employees courts must balance “the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Id.* at 568. The Court found Pickering spoke as a citizen on a matter of public concern, but the school failed to demonstrate that Pickering’s speech impeded the proper performance of his daily duties in the classroom or interfered with the regular operation of the school generally. *Id.* at 571-72. Thus, the school wrongly terminated Pickering for engaging in protected speech. *See also Nat’l Treasury Emp. Union*, 513 U.S. 454 (protecting

First Amendment right of federal employees to speak freely outside the workplace and accept honoraria for their expressive activities).

The Court further clarified the public employee speech doctrine in *Connick v. Myers*. There, an assistant district attorney was fired for circulating a questionnaire among colleagues about their level of confidence in supervisors and whether they felt pressured to work in political campaigns. 461 U.S. 138, 141 (1983). This Court concluded that the question of whether a public employee's speech is constitutionally protected turns on whether it was "public" or "private" in nature. "When employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment." *Id.* at 146. To determine whether speech touches upon a matter of public concern, the Court examined the "content, form, and context of a given statement, as revealed by the whole record." *Id.* at 147-48.

The Court held that Myers' discharge did not offend the First Amendment because her speech consisted almost entirely of matters not of public concern. *Id.* at 154. The Court reasoned that if the district attorney had released the questionnaire to the public, it "would convey no information at all other than the fact that a single employee is upset with the status quo." *Id.* at 148. This was, in the Court's eyes, hardly a matter of public concern.

Recently, this Court brought further clarity to the “public” versus “private” distinction in public employee speech cases. In *Garcetti v. Ceballos*, a deputy district attorney prepared a memorandum that notified his superiors of misrepresentations in a criminal affidavit. 547 U.S. at 413-14. Ceballos’ superiors decided to proceed with the prosecution and Ceballos eventually testified for the defense about the affidavit. *Id.* at 414-15. In the aftermath, he was subjected to a series of adverse employment actions. *Id.* at 415. Ceballos sued, claiming those actions violated his right to freedom of speech. *Id.*

This Court denied Ceballos’ First Amendment retaliation claim because the first element of the claim – the “protected speech” element – was not satisfied. The Court held speech made by a public employee pursuant to official duties is not speech made as a “citizen,” and, thus, is not “protected speech” under the First Amendment. *Id.* at 421. The parties did not dispute that Ceballos wrote pursuant to his duties as a deputy in the District Attorney’s office, so the Court found his speech merited no First Amendment protection.<sup>2</sup> But the Court also cautioned it was not articulating a “comprehensive framework for defining the scope of an employee’s duties” because that is a “practical” inquiry based on the facts of the case. *Id.* at 424.

The circumstances surrounding Dixon’s termination from the University of Toledo fall squarely within the *Pickering-Connick-Garcetti*

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<sup>2</sup> The Court explicitly declined, however, to extend the holding to cases involving academic scholarship or classroom instruction, thereby preserving academic freedom and free speech for teachers and professors. *Id.* at 425.

analysis. Dixon read an editorial in the *Toledo Free Press* that drew parallels between “the gay rights struggle” and the “struggles” of African-Americans. App. 47-48. As an African-American woman, she wanted to provide a different point of view, and penned an op-ed that the paper published two weeks later. App. 51. Respondents do not dispute that her opinion piece discussed a matter of public concern. App. 11.

Like the teacher in *Pickering*, Dixon’s op-ed identified her as a citizen: “Crystal Dixon lives in Maumee.” App. 53. While Dixon mentions she is an alumna of the University of Toledo and she discusses the university’s efforts to resolve benefit disparities for employees – hardly a criticism of her employer’s policies – nowhere in her piece does she mention her employment by the university. App. 51-53. In *Pickering*, the teacher did not identify himself as an employee of the school, even though his discussion of the issues clearly demonstrated his employment. See 391 U.S. at 578 (“I must sign this letter as a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration.”).

By contrast, when University of Toledo president Dr. Lloyd Jacobs responded to Dixon’s opinion piece by publishing one of his own, his op-ed identified him by stating “Dr. Lloyd Jacobs is president of University of Toledo,” App. 56, and he wrote to “clarify the position of the University of Toledo,” App. 54. Jacobs, not Dixon, identifies her employment with the University. App. 54.

Plainly, Dixon did not write her opinion piece pursuant to her job duties as vice president for human resources. So *Garcetti*'s job duties test does not apply. Nor was her op-ed merely of private concern under *Connick*, as Respondents concede. Rather, Dixon's speech bears close resemblance to that of *Pickering*'s, and yet the Sixth Circuit sidestepped that precedent, read the generalized descriptions of Dixon's duties, and applied a rebuttable presumption normally reserved for policymaking public employees. App. 11-12 (citing *Rose v. Stephens*, 291 F.3d 917 (6th Cir. 2002)). Indeed, the Sixth Circuit ignored this Court's admonition in *Garcetti* that "[f]ormal job descriptions often bear little resemblance to the duties an employee actually is expected to perform." *Garcetti*, 547 U.S. at 424-25. That is why the Court rejected "the suggestion that employers can restrict employees' rights by creating excessively broad job descriptions," which Respondents have done here. *Id.* at 424.

While public employees lose First Amendment protection when they are not speaking as citizens, but pursuant to their official duties, *Garcetti*, 547 U.S. at 421, the protections of the First Amendment do extend to those employees outside the workplace when commenting as citizens on matters of public concern, *Pickering*, 391 U.S. at 568. The Sixth Circuit's presumption to the contrary must be reversed because Dixon's speech falls clearly within *Pickering*'s protections.

## II. The Sixth Circuit's Decision Empowers Government Employers to Impose Political Litmus Tests on Employees.

By now it is axiomatic that “neither federal nor state government may condition employment on taking oaths that impinge on rights guaranteed by the First and Fourteenth Amendments respectively, as for example those relating to political beliefs.” *Cole v. Richardson*, 405 U.S. 676, 680 (1972) (citing *Law Students Civil Rights Research Council v. Wadmond*, 401 U.S. 154 (1971); *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971); *Connell v. Higginbotham*, 403 U.S. 207, 209 (1971) (Marshall, J., concurring in result)). Derivative of that axiom is a commitment that public employment may not “be conditioned on an oath that one has not engaged, or will not engage, in protected speech activities” including criticism of “institutions of government.” *Cole*, 405 U.S. at 680 (citing cases).

As this Court restated just this term, the government “may not deny a benefit [such as public employment] to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.” *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, No. 12-10, --- S. Ct. ---, 2013 WL 3064411, at \*6 (June 20, 2013) (citation and quotation marks omitted). If the government is providing money to an organization, it cannot require that organization to adopt a particular message on an issue of public concern. *See id.* at \*9 (“By demanding that funding recipients adopt—as their own—the Government’s view on an issue of public concern, the condition by its very



nature affects protected conduct outside the scope of the federally funded program.”) (citation omitted). In the same way, if the government is providing someone with a job, it cannot require that person to adopt a particular viewpoint outside the workplace.

In the 1950s and 1960s, this country experienced a widespread effort to require public employees, especially those employed by educational institutions, to swear loyalty oaths to the state and reveal groups with which they associated. *Connick*, 461 U.S. at 144. This Court roundly rejected those efforts as infringing the fundamental liberties of speech and association. *See, e.g., Wieman v. Updegraff*, 344 U.S. 183 (1952) (holding state cannot require employees to establish loyalty by denying past affiliation with Communists). The Sixth Circuit’s decision below contradicts that precedent and empowers government employers to mandate that employees swear allegiance to the government’s viewpoints even outside the workplace. Fundamentally, the Sixth Circuit’s decision forces public employees to say what they do not believe when off-duty, imposes a modern-day loyalty oath and litmus test on public employment, and allows public employers to punish speakers who utter viewpoints the employers find “offensive.”

The Sixth Circuit wrongly applied a presumption that when a policymaking public employee is discharged on the basis of speech related to her political or policy views, “the *Pickering* balance favors the government as a matter of law.” App. 12 (citing *Rose*, 291 F.3d at 921). The lower courts applied this presumption to Dixon’s speech, even though she wrote the op-ed in the *Toledo Free Press*

as a citizen commenting on a matter of public concern. App. 18.

The *Rose* presumption arises out of the *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, 445 U.S. 507 (1980), line of cases discussing high-level state policymakers who were discharged due to improper political patronage. But *Rose* involved a state police commissioner who was appointed by an executive branch politician. The commissioner was fired for writing an internal memorandum on a personnel matter. *Rose*, 291 F.3d at 919. Unlike Dixon’s op-ed, the *Rose* commissioner admitted he wrote the memorandum in his official capacity, not as a citizen. *Id.* Yet the Sixth Circuit applied *Rose* to this case and extended the policymaker presumption well beyond First Amendment limits by classifying a university administrator, whose employment is clearly not related to political patronage, as occupying a job that necessitates her complete agreement with university policy even when off-duty. The First Amendment does not permit such a loyalty oath.

The Sixth Circuit’s ruling below betrays decades of precedent forbidding political litmus tests and loyalty oaths for non-political government jobs. To sustain Respondents’ compulsory public agreement with its diversity policies, the Sixth Circuit was “required to say that a Bill of Rights which guards the individual’s right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind.” *Barnette*, 319 U.S. at 634.

Seventy years ago in *Barnette*, this Court struck down a state requirement that public school

students pledge allegiance to the flag. *Id.* at 642. In doing so, it reminded us that “public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction.” *Id.* at 637. Nor did it allow the school board a constitutional pass for requiring students and teachers to participate in a new policy of pledging allegiance. The Court noted that the school board has “of course, important, delicate, and highly discretionary functions, but none that [it] may not perform within the limits of the Bill of Rights.” *Id.*

Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

*Id.* at 641.

*Barnette*'s precedent informed later decisions of this Court that struck down state investigations into

subversive activities, *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), statutes requiring educators to swear they were not Communists, *Keyishian*, 385 U.S. 589, and even laws compelling public declarations in the existence of God as a condition of holding public employment, *Torcaso v. Watkins*, 367 U.S. 488 (1961). The Sixth Circuit's decision below and in *Rose* ignore these precedents.

Dixon's personal opinion concerning civil rights issues expressed through public media should garner at least as much constitutional protection as Sweezy's lecture on Marxism at the University of New Hampshire. "The essentiality of freedom in the community of American universities is almost self-evident." *Sweezy*, 354 U.S. at 250. Dixon relied on the fact that "[o]ur form of government is built on the premise that every citizen shall have the right to engage in political expression and association." *Id.* "Mere unorthodoxy or dissent from the prevailing mores" including those of public employers "is not to be condemned" especially when expressed outside the workplace. *Id.* at 251.

The case at bar is also similar to the educators in *Keyishian* who refused to sign pledges that they were not Communists. While those educators had no right to public employment at a state university, they did retain a right to disagree with the viewpoints of the university and publicly express contrary viewpoints. This Court reminded the university that the "vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Keyishian*, 385 U.S. at 603.

Similarly, Dixon's right to disagree publicly with her public employer's political views is confirmed by *Torcaso*, in which this Court held that a state cannot require an employee to declare belief in God in order to hold public office. 367 U.S. at 495-96. If the state cannot condition public employment on agreement with the state's view of the divine, then Respondents cannot condition Dixon's employment on her agreement with university policy when she is not performing her job duties, but is speaking as a citizen on a matter of public concern. See *Garcetti*, 547 U.S. at 421 (finding public employees have right to free speech when not performing job duties); see also *McDaniel v. Paty*, 435 U.S. 618 (1978) (holding state cannot disqualify a person from public employment based on his religious beliefs).

Government employees should not fear reprisal for exercising their First Amendment rights outside the workplace. The foregoing precedent confirms that they do not abandon those rights by accepting public employment, as they do not abandon other civil rights. Indeed, had Dixon been a member of a union at the University, she could have walked a picket line on any number of issues, expressing her disagreement with University policy, and she would have been protected and applauded. But strangely because she spoke alone, and as a citizen, the Sixth Circuit gave her less constitutional protection than University union employees have under the law. At its core, the Sixth Circuit's decision disables government employees from expressing personal opinions about political and religious topics outside the workplace.

In *Pickering*, the state argued that “the teacher by virtue of his public employment has a duty of loyalty to support his superiors in attaining the generally accepted goals of education and that, if he must speak out publicly, he should do so factually and accurately, commensurate with his education and experience.” 391 U.S. at 568-69. Respondents advanced the same argument in the proceedings below, and the Sixth Circuit agreed, by extending the *Rose* presumption to a public university administrator.

The Sixth Circuit’s application of the *Rose* presumption conflicts with the foregoing precedent because it equates Dixon’s position as vice president of human resources at a university with state or federal executive branch cabinet or policymakers who serve at the pleasure of the executive. But President Jacobs at the University of Toledo is not an elected politician, he is a state university president. And while he may require Dixon to advocate university policies on the job – and there is no evidence she did not do so – he may not censor her speech as a citizen on matters of public concern. *See Peacock v. Duval*, 694 F.2d 644, 647 (9th Cir. 1982) (“Although we recognize the necessity for the efficient functioning of a public university, such efficiency cannot be purchased at the expense of stifling free and unhindered debate on fundamental educational issues.”) (internal citations omitted).

Finally, the decision below also empowers public universities, and public employers more broadly, to impose speech codes on their employees, preventing them from uttering ideas contrary to their university employers. Here, Respondents thought Dixon’s

speech was “offensive” and punished her by terminating her employment. Indeed, President Jacobs pledged: “We will be taking certain internal actions in this instance to more fully align our utterances and actions with this value system.” App. 56. In other words, any other employees who disagreed publicly with Respondents’ values when off the clock would find themselves out of work. This impedes the preservation of the “free marketplace of ideas” against “arbitrary interference of university officials.” *Parate v. Isibor*, 868 F.2d 821, 830 (6th Cir. 1989) (citing *Keyishian*, 385 U.S. at 603).

To enforce the guarantees of the Bill of Rights today against government compulsion to speak against one’s beliefs is “to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.” *Barnette*, 319 U.S. at 637. The Petition warrants certiorari to correct a ruling that could have wide ranging negative implications for the free speech rights of public employees, especially those at public universities.

### **III. *Amici* Are Aware of a Growing Trend in Higher Education to Require Students, Faculty, and Staff to Swear Public Allegiance to Ideas with which They Disagree as a Condition of Employment or Graduation.**

Unfortunately, Dixon’s experience is not unique within the Ivory Tower and represents a growing trend of public universities silencing students, faculty, and staff who hold religious and political

viewpoints outside the progressive campus mainstream. *Amici* are aware of many cases in which universities denied students the ability to pursue a degree, faculty the ability to speak freely inside and outside the classroom, and staff the ability to hold personal views contrary to university policy.

In *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012), Eastern Michigan University dismissed a counseling student from her degree program. What was Ward's offense? She referred a client in a practicum program to another counselor because the client wanted counseling on a relationship that violated her religious belief. *Id.* at 730-31. Ward did what many counselors do every day, but the university commenced a disciplinary proceeding and eventually expelled Ward from the program. *Id.* at 731. The university argued Ward violated its ethics code and expressed views contrary to the university's policies. *Id.* Because Ward was "unwilling to change her behavior," the university expelled her. *Id.* The Sixth Circuit, in a decision vastly different than the one at bar, found that a "university cannot compel a student to alter or violate her belief systems based on a phantom policy as the price for obtaining a degree." *Id.* 738 (citing *Barnette*, 319 U.S. at 642).

The problem of public university loyalty codes is not limited to students. Even faculty free speech and academic freedom is being censored when it diverges from the dominant political culture on campus. The University of North Carolina-Wilmington denied a promotion to a faculty member because the university disagreed with the content of his speech in columns written for the conservative website



Townhall.com. *Adams v. Trs. of Univ. of N.C.-Wilmington*, 640 F.3d 550 (4th Cir. 2011). Gallaudet University placed its chief diversity officer on administrative leave when school officials learned that she signed a petition to put a marriage referendum on the Maryland ballot.<sup>3</sup> The University of California, Los Angeles refused to reappoint a professor because his research on air pollution did not accord with the university's "mission."<sup>4</sup> Given these situations, it is no surprise that a 2010 study by the American Association of Colleges and Universities found that only 18.5% of faculty and staff strongly agreed that it was "safe to hold unpopular positions on this campus."<sup>5</sup>

As these situations show, on many public university campuses today, faculty and staff do not qualify for public employment unless their views align with those of the university on issues such as sexuality, religion, and politics. Likewise, many students pursuing professional degrees are finding that they must adopt and advocate university

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<sup>3</sup> Jenna Johnson, *Gallaudet Diversity Officer on Paid Leave After Signing Petition on Same-Sex Marriage Law*, WASH. POST, Oct. 10, 2012, [http://www.washingtonpost.com/local/education/gallaudet-diversity-officer-on-paid-leave-after-signing-petition-on-same-sex-marriage-law/2012/10/10/bdb1e720-1332-11e2-a16b-2c110031514a\\_story.html](http://www.washingtonpost.com/local/education/gallaudet-diversity-officer-on-paid-leave-after-signing-petition-on-same-sex-marriage-law/2012/10/10/bdb1e720-1332-11e2-a16b-2c110031514a_story.html).

<sup>4</sup> Debra J. Saunders, *Academic Mission or UCLA Speech Code?*, S.F. CHRON., Apr. 11, 2011, <http://www.sfgate.com/opinion/saunders/article/Academic-mission-or-UCLA-speech-code-2375264.php>.

<sup>5</sup> Eric L. Dey, et al., *Engaging Diverse Viewpoints: What is the Campus Climate for Perspective-Taking?* 16 (Ass'n of Am. Coll. & Univ. ed., 2010), [http://www.aacu.org/core\\_commitments/documents/Engaging\\_Diverse\\_Viewpoints.pdf](http://www.aacu.org/core_commitments/documents/Engaging_Diverse_Viewpoints.pdf).

positions on sexual ethics and politics in order to graduate.

Dixon's Petition demonstrates that public universities have resurrected loyalty oaths for students, faculty, and administrators. The Sixth Circuit wrongly held that Dixon was a policymaker entitled to no First Amendment protection. She spoke as a citizen on a matter of public concern, but because her viewpoint conflicted with Respondents' views, they fired her. The Court should grant review to reject Respondents' loyalty oath for public employment and clarify that public employees, when they speak as citizens on matters of public concern, enjoy broad free speech protection.

#### CONCLUSION

The Court should grant the Petition.

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