

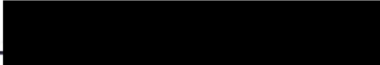
# WHITAKER HAGENOW & GUSTOFF LLP

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VIA EMAIL  and REGULAR MAIL

March 16, 2015

Ms. Shannon M. Lemke  
Federal Investigator  
EEOC – Milwaukee Area Office  
310 W. Wisconsin Ave., Suite 500  
Milwaukee, WI 53203

**RE: *Robert Eschliman v. B.F. Shaw Printing Co., Inc.***  
**EEOC Charge No. 443-2014-1242C**

Ms. Lemke:

B.F. Shaw Printing Co., Inc. (the “Media Company”) terminated Bob Eschliman for writing about the desecration and revision of a religious text he holds to be sacred and sacramental pursuant to his sincerely-held religious beliefs. The Media Company admits that Bob was fired for the opinions – uniquely *religious* opinions based upon his sincerely held religious beliefs – expressed in one, private blog post, then obscures the true reason for Bob’s termination. Along the way, counsel for the Media Company repeatedly quotes just a word or two, of hundreds written in a single post, creating a vile caricature of this soft-spoken, Navy veteran, and father of two young children, who holds religious beliefs similar to millions of Americans.

Perhaps the single most shocking claim made by the Media Company is that Bob suppressed opposing viewpoints, particularly on the topic of LGBT issues. *See* Response at 3, 6. That is demonstrably false. *See* Exhibit 1. During his tenure as Editor-in-Chief, Bob routinely allowed for multiple voices on controversial issues. In one instance, he backed a young reporter’s efforts to tell the story of a Newton resident who “came out.” Not surprisingly, that report engendered significant debate in the small town neighborhood that is Newton, Iowa. When the young reporter expressed dismay at the negative reactions to his story by the community, Bob encouraged him to pen an editorial *in defense* of the LGBT story. More negative comments rolled in, so Bob did what any good editor does: he put letters to the editor from both sides of the issue on the editorial page. When Bob was fired for expressing his sincerely held religious beliefs, this young reporter whom Bob had defended found a way to come to Bob’s home – in tears – to express his gratitude to Bob for backing his LGBT story and offer his support for the falsifications

The Media Company then argues that companies that operate newspapers are permitted, perhaps even required, to terminate employees who opine upon their sincerely held religious beliefs outside the workplace. Through its counsel's efforts, the Media Company now attempts to cloak such rank discrimination with appeals to journalistic integrity and editorial codes of ethics. And, if that were not enough, the Media Company now blames Bob for his own termination, as if Bob could control the actions of a disgruntled employee, local activists intent on his demise, an unrelated television network trying to increase viewership, and a self-promoting blogger intent on growing his brand at the expense of Bob's livelihood.

This began, the Media Company suggests, when a "former reporter" told Dan Goetz and John Rung about Bob's obscure blog post. What the Media Company *never* tells the EEOC is that this "former reporter" was a *disgruntled* employee. The person who concocted this entire controversy is someone the Media Company was set to terminate mere days before Bob wrote about his sincerely held religious beliefs on his blog. That employee the Media Company was content to tolerate for almost a full year, despite multiple instances of misconduct that would have supported termination for cause. Yet, within just a few days of Bob's personal written, religious defense of a text he holds sacred during non-work hours, using private resources, Bob is terminated. And not just terminated, no less than the president of the company takes to the editorial pages to condemn those expressed sincerely held religious beliefs in print.

In a tolerant, inclusive society companies should respect an employee's religion rather than terminate an employee when disgruntled employees encourage third parties to complain about the employee's written religious opinions. The Media Company argues that Bob should be terminated for the controversy and public opinion, but that argument has been tried and failed—repeatedly—under Title VII. The Media Company cannot fire someone for religious expression any more than it can fire an African American for being a member of the NAACP, or a Muslim reporter who expresses personal offense, on his own blog when he learns that United States government personnel flush Korans down the toilet.

## **I. The Media Company omits and misconstrues the facts.**

### *1. A disgruntled former employee attacks the paper, making Bob's sincerely held religious beliefs an issue*

The Media Company omits a key fact: the former employee that contacted them and other media sources—was almost terminated. This disgruntled employee had remained at the Media Company for almost a year despite open misconduct, insubordination, and the authoring of a false story in the Media Company's paper – a false story that led to threats of legal action, a public retraction, and the publication of a corrected article that Bob himself was forced to author. This employee engaged in gross insubordination, and grew enraged after learning he would take on new duties. He was argumentative with customers, failed to follow through on messages, was often seen with his feet propped up on the desk by delivery people who dropped the papers, and was often not at the office when he said he would be.

All of this was reported to Dan Goetz, who considered the same reason for termination. Unlike Bob, however, this employee was never disciplined, suspended, or terminated. Instead,

the paper published a retraction, and then Bob had to personally write a corrected article. Despite the obvious community controversy and public humiliation to the paper, as well as the lasting damage to its vaunted reputation, brand, and journalistic integrity, a history of insubordination and complaints from customers, delivery drivers, and legitimate threats of legal action, the employee remained in place.

Yet, when John Rung confronts Dan Goetz about the concocted controversy surrounding Bob's written defense of his sincerely held religious beliefs – a defense he wrote on his personal blog, on his own time, using his private resources – Goetz immediately suspends and, within days, Goetz joins Rung to terminate Bob before taking to their own editorial page to publicly shame Bob over his religious opinions.

*2. Goetz and Rung knew about, and affirmed, Bob's personal blogging during non-work hours and knew the controversy was concocted by a former employee*

The Media Company now claims it was unaware of Bob's personal blog, but Bob informed Goetz on numerous occasions – including during his initial interview with Goetz. Moreover, **Goetz and Rung both received an email from the disgruntled former employee (only a few days after becoming a “former” employee) who complained that, among other things, Bob had a personal blog and that Bob was a Christian.** The Media Company, however, omits that email from its extensive list of exhibits, even though Goetz reassured Bob that the issue was the work of a disgruntled former employee. The complaint to Romenesko made similar, but more general complaints about Bob, his religious beliefs, other private blog posts – all as an attempt to smear both Bob and the paper.

*3. Bob's Personal Blog and Blog Entry*

Bob had a small personal blog. It was a blog in the genuine sense of the term: an online journal (or “web log”) on which Bob published his occasional personal thoughts, sometimes expressing his personal religious beliefs. It was a free blog; Bob did not pay for the bandwidth, nor did the Media Company. In fact, Bob had no domain address. Instead, he signed up for a free Wordpress blog and occasionally posted thoughts there on an irregular basis and on his own time. The thoughts offered on Bob's blog were his own, and were presented as his own. It was simply one more place for Bob, a lifelong writer, to keep his writing instrument sharp.

The overwhelming substance of Bob's blog entry explains the differences, alterations, and changes that some have made to the text of the holy book by which Bob has ordered his life pursuant to his sincerely held religious beliefs. Contrary to the Media Company's assertions, Bob quotes chapter and verse (literally) to demonstrate the differences between the *Queen James Bible* and sacred Scripture commonly accepted by millions of Christians worldwide for over two millennia. Bob's personal blog post consists entirely of biblical quotations and references to the Bible, accompanied by quotations and citations to those who state that their purpose is to rewrite Christianity's most sacred text.

Keep in mind, early Christians were known as the “people of the Book,” and have been referred to that way *for millennia*. Even today, Muslims, citing the Quran, refer to Christians and Jews alike as “the people of the Book.” So central is Holy Scripture to Christians, like Bob, that

they have been identified by a *book* – the Bible – for over *two millennia*. It is therefore understandable why Bob would opine upon efforts by some to redefine that Book and, thereby, redefine Christianity itself. His hope was that none would be taken in – deceived by – those whose stated intent was to remake Christianity – the very warning of the passage of Matthew that Bob quoted at the beginning of his blog entry. Bob defended the Book that is most holy to his faith against attempts to rewrite it, and for that – expressing his personal sincerely held religious beliefs concerning the Bible – the Media Company terminated him.

In their position statement, the Media Company repeatedly references one or two words Bob used in the blog post in question, highlighting certain words in an effort to unfairly caricature Bob.<sup>1</sup> In the post, however, Bob quotes scripture at length and takes issue with groups who, by their own statements (which he quotes), aim to desecrate sacred texts. The Media Company does not, for instance, repeatedly refer to the derogatory title of the rewritten, desacralized Bible, the *Queen James Bible*. The Media Company suggests that Bob sets out to smear all LGBT persons, when, in fact his blog post begins with a long warning from Jesus about attempts to rewrite sacred texts and focuses solely on the people doing so.

The blog post itself is overshadowed by a large picture of a desecrated Bible. It talks about only one group, the Reformation Project, who is rewriting the Bible, and he then quotes that group's own words about its changes to Christianity's most holy text. He also quotes and discusses the group's efforts to de-legitimate Christian teaching by working *within* Christianity to undermine it, and then he returns to a reminder that Jesus warned about groups who would cause Christians to become hated by rewriting sacred teaching and text, making an analogy.

In Bob's opinion, based on his sincerely held religious beliefs, that belies a metaphysical battle between good and evil. The blog post's only connection to homosexuality stems from the fact that the version of the Bible at the center of Bob's discussion was a Bible crafted by homosexual activists trying to look like Christians in order to support their activism. The blog post begins with scripture about the eternal battle between spiritual good and spiritual evil, and ends with a reference to the same.

The Media Company purposefully stresses only a few terms of the hundreds written on Bob's personal blog, wrenching them repeatedly out of context, and implying they were used for inflammatory purposes, rather than in response to an offensive, derogatory desecration of the most sacred artifact in all of Christianity. Bob's parenthetical reference to King James as a "flaming homo," for instance, was a sarcastic reference to the underlying reason offered by the editors of the *Queen James Bible* chose such an offensive title:<sup>2</sup> that King James (of King James Version of the Bible fame) has been recently rumored to be a homosexual.<sup>3</sup> Bob never referred

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<sup>1</sup> Moreover, the Media Company provided the EEOC an exhibit with false emphases. Resp. to EEOC, Exh. E (highlighting, *inter alia*, the term "deceivers"). The Media Company searched for those terms—but those terms were not, in fact, bolded in the original post.

<sup>2</sup> So cheeky, in fact, that one of the readers complained about that Bible title, as though Bob made it up, when, in fact, it came from the publisher of that document.

<sup>3</sup> See "Why We Chose the King James Version" <http://queenjamesbible.com/gay-bible/> accessed March 11, 2015 ("We chose the 1769 form of the King James Bible for our revision for the following reasons: 1. The obvious gay link to King James, known amongst friends and courtiers as "Queen James" because of his many gay lovers.").

to anyone as such, despite the implications in the Media Company's statement to the EEOC; rather, he employed subtle irony to make a point.<sup>4</sup> As another example, "LGBTQXYZ" is a term Bob saw the "Pride Planner Network"<sup>5</sup> use repeatedly, and, so far as he is aware, it is not used as a term of offense.<sup>6</sup> Further, when Bob referred to "the enemy," he did not, as the Media Company's statement implies, refer to LGBT persons; he referred instead to that old and great enemy, *i.e.*, Satan, the devil referred to as the Christian's "adversary" that is like "a roaring lion, [that] walketh about, seeking whom he may devour." *See* I Peter 5:8 (KJV). His reference ties back into the theme of the post, and refers back to the opening scriptural quote of the post. As the epistler Paul wrote: Christians struggle not "against flesh and blood," in other words, his fellow man, but instead, "against the spiritual forces of evil in the heavenly places[.]" or, as others have put it, simply: Satan, or the enemy (sometimes capitalized, and sometimes not). *See, e.g.*, Ephesians 6:12 (KJV).

In the entire post, only one term, used only twice, referred to those attempting to desecralize and rewrite Christian sacred texts (rather than any group generally, as is clear from the context throughout the post) as the "Gaystapo," making an exaggerated analogy to others who employed and rewrote religion to ends with which we are all now familiar. But even that term, written on a personal blog, responded to the offensiveness of those rewriting history, rewriting, and thus destroying, sacred texts, and seeking to convince others, through deception, what Christianity *truly* teaches.

Of course, only a handful of close friends and Bob's family would have read this blog post that was hosted on an obscure corner of the internet had a disgruntled former employee not deliberately excerpted the post out of context and harassed others with it, deceiving them in order to create controversy and harm Bob.

#### *4. Deleting the personal blog*

Bob took down his personal blog at the direct request of Dan Goetz, his supervisor at the newspaper. When Romenekso contacted Bob, Bob immediately went to Dan Goetz. Goetz advised Bob to take the blog down and have no contact with anyone in the media. Bob followed those instructions to the letter. He immediately deleted not just the blog entry, but his *entire* personal blog as requested by the Media Company's publisher.

Accordingly, the Media Company now claims it terminated Bob for things Bob did at Goetz's direction, and denies what Bob told Goetz and Goetz repeatedly personally acknowledged to Bob. Goetz and Rung even deny knowledge of the blog prior to the post in question, despite receiving notice of it both from Bob (to Goetz) and from a former employee.

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<sup>4</sup> Note, too, that the text Bob wrote about targets the father of Christianity in English and indeed in Western Civilization—the man who brought the Bible into common use in English and whose translation became *the most widely printed book in all of human history*. In a secular context, where things are not even sacred, this would be akin to someone insisting that George Washington, father of the American presidency, be referred to exclusively as a domestic terrorist.

<sup>5</sup> *See* <http://prideplanner.com/LGBTQbusinessmixers.html> accessed March 9, 2015.

<sup>6</sup> There are a plethora of various terms used to identify the community, such as "LGBT," "LGBT...XYZ," "LGBTQXYZ," "LGBTQIA" (or "LGBTQIA"), for example..

### *5. Reporting Bob's personal blogging activity*

When Bob began working for the Media Company, his personal blogging activities during non-work hours were well-known to his employer. When Dan Goetz first interviewed Bob, he informed Goetz of the commentaries he occasionally wrote on his personal blog during his downtime at home. He also told Goetz about his contributions on the blogs of several friends. Mr. Goetz had frequent, casual conversations with Bob about politics and other subject matter that would prompt comments from Bob about things he had written on his personal blog. His personal blogging during non-work hours was well-known – and approved of – by the Media Company well before a disgruntled, former employee created this controversy.

Although Bob was very open about it, Bob was not, and is not, required to disclose his personal religious beliefs or his religious activity based on those beliefs to his employer or prospective employer. The Media Company suggests that Bob *should* have listed his religious beliefs and the places in which he engages in religious expression based on those beliefs on his résumé—but that suggestion itself in all likelihood would violate Title VII's prohibition on the consideration of one's religion in making employment decisions. *See* 42 U.S.C.S. § 2000e-2(m) (prohibiting the use of religion as a “motivating factor for any employment practice,” including divulging such information on a document used to apply for a job.).

### *6. Responding to media inquiries*

Only after a disgruntled, former employee tipped off Jim Romenesko and the Media Company about Bob's personal blog, a handful of small media sources became interested in the story. At that point, the Media Company had not yet suspended or terminated Bob, but Bob understood the sensitive nature of that moment. So, he sought direction from his publisher, Dan Goetz, in advance. Goetz directed Bob to forward any inquiries from the media directed directly to him. Bob did so, without response or comment. When Goetz placed Bob on suspension for the expression of his sincerely held religious beliefs, Bob continued to adhere to this instruction, as well as the other conditions (no access to corporate email and no contact with coworkers) until he was terminated and asked to leave immediately, having his personal effects delivered to him at a later date. Bob did not discuss this case in the media until, accompanied by his attorneys, he announced the filing of this EEOC complaint.

The Media Company could have done any number of things in response to the disgruntled former employee's concocted scheme: publish opinions on both sides of the issue, or only those opposing Bob, issue their own opinion, nothing at all, respond in their own way, ask Bob to handle complaints diplomatically and announce that the paper had no position, or had its own position, or even perhaps ask Bob to reconsider the use of some terms. The Media Company, after all, is a *media* company with virtually unlimited bandwidth and editorial space in their newspapers across the country at its disposal. Bob himself, with considerably fewer resources at his disposal, had handled issues involving public controversy at the paper, including issues of social concern and those caused by the disgruntled former employee.

The Media Company chose not to do so. Instead, it chose to make an example out of Bob,<sup>7</sup> terminating this award-winning journalist (who had recently received a raise) that had contributed greatly to the rebranding of the Media Company's news product.

#### *7. Ability to Engage Journalism Fairly*

Bob has a long history of fair journalism at the paper, and the fairness allegations only distract from Bob's long history and the media company's issue with Bob's sincerely held religious beliefs about sacred texts. The Media Company insinuates that Bob's fairness may suddenly be at issue over a word or two published on a personal blog while off the clock, despite years of history publishing articles on both sides of issues. The very newspaper Bob was fired from contains several articles written *while Bob was still the Editor-in-Chief* of the newspaper in which he modeled how to edit a newspaper with fairness on both sides of the issue. *See for e.g.*, Exhibit 1. Not only did Bob encourage the reporting of a sensitive story of one resident of Newton's "coming out" as a homosexual in the middle of conservative Iowa, he personally encouraged the reporter to write a defense of the story on the paper's opinion page. When that continued to receive pushback from readers, Bob published letters to the editor that were reflective of the community's feelings. The story ended beneficially after this public conversation, made possible by Bob's editorial work. Bob had a long history of reporting both sides of issues, including LGBT issues and even LGBT activism. Bob was fired for expressing his personal religious beliefs on his own blog, on his own time, not for want of journalistic integrity.

Bob set the standard of backing up an employee and engaging in fair journalism at the *Newton Daily News* that the Media Company then abandoned by terminating Bob. He had always been open and honest about his personal religious beliefs and political views on the paper's opinion page and encouraged the same from his reporters. When his reporters stuck their neck out on a matter of controversy, he backed them up and organized a balanced perspective to be shared within the pages of the newspaper.

## **II. Media companies must comply with Title VII.**

Media companies are fully bound by the requirements of the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and may not make employment decisions based upon an employee's religious beliefs or the expression of those beliefs. There are no amendments or alterations to Title VII that exempt media companies from compliance with Title VII. "The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others." *AP v. NLRB*, 301 U.S. 103, 132-33 (1937). The Media Company asserts multiple times that not only *could* it terminate Bob for the expression of a religious belief with which it disagreed, but that its policies and principles underlying the industry *required* it to do so because of its special journalistic industry—but that is the type of discrimination that the EEOC was created to combat and Title VII offers no special safe haven for media companies like Shaw Media.

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<sup>7</sup> See John Rung's email to Tom Shaw (part owner of Shaw Media, Inc.), dated April 30, 2014 and attached as Exhibit O to Shaw Media's letter to the EEOC, explaining that Bob had to be fired because of the religious opinion he had expressed on his "personal blog" in order to avoid the setting of "a precedent" for future editors.



### **III. The media company intentionally discriminated against Bob**

Bob engaged in the private expression of his sincerely held religious beliefs during hours in which his employer had no supervisory control of him and the Media Company suspended and then terminated his employment, without any hearing or discussion, because of it. That is illegal. *See* 42 U.S.C.S. § 2000e-2(a)(1) (“It shall be an unlawful employment practice for an employer – (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . religion . . .”).

Bob engaged in the private expression of his sincerely held religious beliefs—expressing his beliefs about the desecration of a sacred text, the Bible —during non-work hours at home and, based solely upon the expression of those religious beliefs, the Media Company deprived him of the opportunity for further employment. That is an unlawful employment practice. *See* 42 U.S.C. § 2000e-2(a)(2) (“It shall be an unlawful employment practice for an employer – (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s . . . religion . . .”).

The Media Company argues its business is somehow special because it is subject to public opinion and branding, so it must terminate Bob—based upon the opinion of third parties. In the past, many companies made that same defense, and lost, under Title VII, when they tried to fire African Americans. Companies cannot engage in discrimination against employees based upon race or religion, simply because it arguably helps a company’s public image. *See, e.g., Langford v. Texarkana*, 478 F.2d 262, 267 (8th Cir. 1973) (employer discriminated when firing employees for associations outside of business hours “even if . . . it results in diminishing the effectiveness of the employees[,]” because “this Court and the Supreme Court have rejected the proposition that interference with constitutional rights can be justified on the grounds that the community is hostile to their exercise and vigorously displays its feelings.”). Title VII expressly forbids such a defense to a claim, as here, of intentional discrimination. *See* 42 U.S.C. § 2000e-2(k)(2) (“A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.”).

Even if it were lawful to impose outside-the-workplace corporate censorship on the religious expression of good, award-winning employees like Bob, the Media Company mixes reasonable employment actions with unlawful employment actions under Title VII. 42 U.S.C. § 2000e-2(m) (“ . . . an unlawful employment practice is established when the complaining party demonstrates that . . . religion . . . was a motivating factor for any employment practice, even though other factors also motivated the practice.”). The Media Company’s “Communications Policy” cannot overwrite Title VII’s prohibition on religious discrimination any more than it can overwrite Title VII’s prohibition on racial discrimination when companies attempt to fire minority employees because being a minority employee is unpopular with some audiences or markets. In particular, the Media Company may list other reasons it allegedly terminated Bob,



even though they referred specifically to his religious views, but those reasons, even if they were true, are irrelevant under Title VII. 42 U.S.C. § 2000e-2(m).<sup>8</sup>

In short, the Media Company intentionally discriminated against Bob because of the expression of his sincerely held religious beliefs. And moreover, the Media Company then told everyone why it terminated Bob. “Last week, he expressed an opinion on his personal blog that in no way reflects the opinion of the Newton Daily News or Shaw Media.” *See* Exhibit 2. This explanation followed the announcement of the action the Media Company had already taken: “Bob Eschliman is no longer the editor of the Newton Daily News.” *Id.* Unequivocally, and in the Media Company’s own words, Bob was fired (“no longer the editor”) because of the opinion he wrote on his personal blog (“he expressed an opinion on his personal blog”) based on his sincerely held religious beliefs.

The media company continued:

There will be some who will criticize our action, and mistakenly cite Mr. Eschliman’s First Amendment rights as a reason he should continue on as editor of the Newton Daily News.

As previously stated, he has a right to voice his opinion. And we have a right to select an editor who we believe best represents our company and best serves the interests of our readers. *Id.*

Shaw Media announced to the world that Bob’s “opinion” – which can only be construed as an opinion based on his personal religious beliefs – was the reason and motivating factor for his termination. Put another way, the Media Company de-selected Bob as their editor because of his religious beliefs, even when that which he holds most dear is attacked, choosing instead to select an editor who would not express his or her religious beliefs. Title VII bars that treatment of an employee’s religion. 42 U.S.C. § 2000e-2, *et seq.*

Bob was an at-will employee who could have been terminated at any time, for any lawful reason. The Media Company *could* have simply chosen to part ways with Bob quietly and privately. Instead, they felt compelled to make an example out of Bob. For that they *had* to offer a reason to support their actions. Not able to question his work ethic or work product, they chose to scapegoat his religious beliefs he expressed on his personal blog and on his personal time. Such an intentional choice to target his religious beliefs as the basis upon which to rest their termination of Bob is clear evidence of considering an employee’s religion in making employment decisions. In short, it is intentional, religious discrimination barred by Title VII.

#### **IV. Bob’s Case is about discrimination**

The Media Company attempts to frame this case as a failure to accommodate case, despite the fact that a Title VII plaintiff makes his own allegations, and here, direct

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<sup>8</sup> It is likewise irrelevant that some at Bob’s company claim to be Catholic, Christian, or members of other religions. Bob’s religious beliefs may well differ from theirs in key respects, and they would be no more entitled to terminate Bob than Bob would be to terminate them – or even someone who adhered to the *Queen James Bible*, for that matter. Discrimination is discrimination, no matter who initiates it.

discrimination is at issue.<sup>9</sup> As explained above, the Media Company engaged in intentional discrimination in express contravention of Title VII. In addition, the Media Company may be liable to Bob under the theories of disparate treatment, retaliation, and even blacklisting.<sup>10</sup> That is, Bob was treated “less favorably than others because of his . . . religion.” *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 609 (1993) quoting *Teamsters v. United States*, 431 U.S. 324, 335-336, n. 15 (1977). The motive for doing so is quite clear: to save perceived reputation. For Bob to establish a *prima facie* case for disparate treatment, he must only establish that he:

1) was a member of a protected group, 2) was meeting the legitimate expectations of his employer, 3) suffered an adverse employment action, and 4) that similarly situated employees, who are not members of the protected group were treated differently.

*Clark v. Runyon*, 218 F.3d 915, 918 (8th Cir. 2000).

“If this *prima facie* case is made out, the burden then shifts to the employer to identify a legitimate reason for the adverse employment action.” *Id.* citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Should the employer manage to assert such a legitimate reason, “[t]he burden then shifts back to the employee to show that the articulated reason was a pretext.” *Id.* citing *McDonnell*, 411 U.S. at 804.

Bob has clearly met his burden of establishing a *prima facie* case. First, it is undisputed that Bob is a member of the Christian faith and, as such, falls within the protected category of a “religion.” His accolades and awards during his tenure with the media company establish the reality that he was meeting, if not exceeding, his employer’s expectations. Bob’s suspension and subsequent termination because of what he wrote about his sincerely held religious beliefs on his personal blog while at home demonstrate the suffering of an adverse employment action. And, finally, as highlighted in the statement attached to his charge of discrimination, there are multiple employees of the Media Company who engage in the expression of opinions through blogging and other forms of social media and have been treated differently than Bob has been treated. In fact, Bob’s personal blogging had been approved of, and encouraged by, the Media Company throughout his tenure. *See* Exhibits 1-9 attached to the Statement of Robert Dale Eschliman in support of the Charge of Discrimination.

## V. Conclusion

Dan Goetz, John Rung, and Shaw Media suspended and then terminated Bob Eschliman because of the religious opinions he expressed on his personal blog. Beyond the sincerely held

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<sup>9</sup> Furthermore, the Media Company argues for unprecedented freedom to discriminate against employees based solely on conduct – including religious expression, conduct based upon sincerely held religious beliefs – outside the workplace. The Media Company cites cases, for instance, allegedly supporting the argument that Bob failed to show an undue burden. Bob need not show “undue burden.” Bob was discriminated *at work* for engaging his religion *outside of work*. The Media Company only cited as support cases where the employee wanted to engage in physical religious conduct *on the job*, in person. None of the cases restricted employees’ off-work activities. The company asks the EEOC, instead, to create sweeping new employer loopholes for Title VII. Under that loophole, *any* Church, Synagogue, or Mosque attendance could subject an employee to termination.

<sup>10</sup> The media company terminated Bob, then, unlike any other termination, the President of the company published a statement announcing to the world that Bob was unfit to hire or to work with, effectively banning Bob from his profession in the most egregious possible way, and further, insinuating that Bob may be unfit generally.

religious beliefs he expressed on his blog, the Media Company offers zero additional reasons for terminating Bob, but purposefully omits to the EEOC that it was a disgruntled former employee who complained to anyone who would listen, and eventually a self-promoting website inflamed the concocted situation.

For the Media Company, employees who express their sincerely held religious beliefs through written opinions on an obscure corner of the Internet during their personal time must be terminated. Of course, they permit, and even encourage, the expression of opinions by their staff on other obscure corners of the Internet. It is only when those opinions turn to aspects of religious beliefs with which the Media Company disagrees or receives a handful of complaints about do they discriminate, retaliate, and ridicule an otherwise faithful employee like Bob.

In this case, an employee voiced religious beliefs, outside of work, with extensive quotations to holy texts, about an attack on what his religion holds to be most sacred—so sacred that they have been *identified with reference to it for over 2,000 years*. An employer violates Title VII when it fires an actual employee by taking his religious beliefs about the most sacred element of his beliefs into account in an employment decision, when it treats the employee worse than even the disgruntled former employee with a long, acknowledged history of complaints and incidents, and when it then announces it has done so to the world.

Sincerely,  
WHITAKER HAGENOW & GUSTOFF, LLP



Matthew Whitaker  
Counsel for Bob Eschliman

CC: Hiram Sasser, Liberty Institute  
Jeremy Dys, Liberty Institute  
Cleve Doty, Liberty Institute

# **EXHIBIT 1**

## Daft has persevered since coming out

Published: Friday, May 17, 2013 11:14 a.m. CDT • Updated: Friday, May 17, 2013 11:37 a.m. CDT

By Ty Rushing Daily News Staff Writer



Ella Daft is a root beer aficionado, greets strangers with hugs, is intelligent and articulate, and could very well become the face of the Lesbian Gay Bisexual Transgendered rights movement in Iowa and she hasn't even graduated high school.

Daft graduates from Newton Senior High School on May 24, but she can already use the phrase "Google me." A quick search shows more than 100 results, including a Facebook "Like" page, a page on anti bullying created by the state of Iowa and, most recently, for being awarded a Gold Iowa Matthew Shepard Scholarship worth \$40,000.

"I was selected as one of three ... it can be applied to my books and tuition, but not room and board," Daft said. "To be eligible for the scholarship, you have to identify as

LGBT and you have to have made efforts to stop bullying, prevent homophobia, spread education, and youth advocacy is a big part of it."

The scholarship is named after Matthew Shepard, a gay man who was murdered in Wyoming, reportedly because of his sexual orientation. The award is funded through the Eychaner Foundation.

Daft has received several other scholarships but acknowledges that this one is her "big one." As the scholarship can only be applied to the state schools of Iowa, Daft plans to attend the University of Northern Iowa.

"I'm hoping to dual major in political science and public relations," Daft said. "I'm hoping to minor in several subjects, but I'll probably have to limit it to just two. I know I want to minor in Spanish. I've got a lot of DMACC credits stored up in that. I would either like to minor in journalism or women's issues."

Coming out of the closet is tough enough, but doing it in high school and later becoming a LGBT spokesperson takes an incredible amount of bravery. Daft shared her experiences coming out.

"I attended Pella Christian my freshman year," Daft said. "My counselor started putting the pieces together. (I) was becoming depressed during certain chapels and was leaving some answers blank on Bible exams. He pulled me into his office one day and asked me if I was gay.

"I naturally started crying and bawling," Daft continued. "A few days later, he gave me a

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sheet of paper and told me to find a different school.”

Daft said she had to wait until the semester ended before leaving the school and said was told to remain in the closet.

“All my peers and teachers knew I was being kicked out, but they didn’t know why,” Daft said. “It was very hard to lie to my teachers, who I looked up to, and to my peers, who I had tried to form some bond with.”

“It was really hard when they would say disgusting and sometimes violent things towards the LGBT community without realizing I was part of that,” Daft said. “That was really hard for me.”

Daft ended up at NHS and used that experience as fuel to fire her fight against intolerance.

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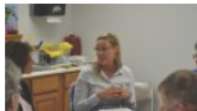
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## Daft has persevered since coming out

Published: Friday, May 17, 2013 11:14 a.m. CDT • Updated: Friday, May 17, 2013 11:37 a.m. CDT



(Continued from Page 1)



"I think that's why I work so hard in the work that I do," Daft said. "That was a really rough time for me. If I can do any amount of work to make it so that other teens and young people don't have to feel the way that I did, then it's a successful day."



Staff writer Ty Rushing may be contacted at (641) 792 3121, ext. 426, or at [trushing@newtondailynews.com](mailto:trushing@newtondailynews.com).



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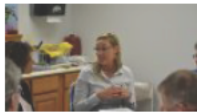
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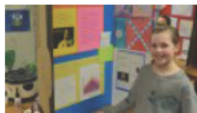
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# We should support one of our own

Published: Wednesday, May 22, 2013 11:27 a.m. CDT

With my columns, I usually prefer to talk about my life and the random adventures that transpire in the life of a 20 something Kansas City transplant in Newton, Iowa.

But something happened last week that kind of bothered me. A few people were offended by the article I wrote on Ella Daft because of her sexual orientation.

This is America, we all the right to have our opinions, but when a young woman who is a product of the educational system in our community gets \$40,000 to go to an in state school, there should be jubilation, not rejection.

I'm very proud of the article I wrote and I'm even more proud of everything Ella has done. To accomplish what she has accomplished while still in high school is amazing. Not only is Ella an overachiever at Newton Senior High School, she has been dually enrolled and acquired a number of credits at DMAAC. When she goes to the University of Northern Iowa, she will be a Freshman/Junior hybrid.

Ella is the youngest child of a big family and has still managed to carve out her own identity. Her mother, Charlet, is a teacher at Basics & Beyond Alternative High School, two of her siblings are teachers as well, and another sibling has a doctorate.

Education is very important to the Dafts.

Ella's mother has told me how proud she is of Ella and everything she has done. She is also a regular at Congregational United Church of Christ in Newton, whose motto of "No matter who you are, no matter where you are on life's journey, you are welcome here," should be universally adopted.

I figured people would be happy to know what one of their own has done. Some of the reaction has been shocking, to say the least. She didn't get this scholarship for simply being gay. Ella worked hard, and the scholarship requires demonstrated activism in the LGBTQ community, as well as a generous portion of time spent in service to one's community.

You need a GPA higher than a 3.0, and you have to show high moral ethical standards and conduct. Would people feel differently if they knew one student I've covered quite frequently was Catholic, or that I was a Baptist?

I've found my place here in Iowa and I've felt welcome ever since. A lot of people back home joked with me before I moved here based off their misconceptions of Iowa.

I was told that I was going to be the only black person here, and that I better "watch my back for the

Klan,” among other similar types of comments, which we all laughed at because none us had ever actually spent an extensive amount of time here before. Of course, all of it turned out to be false and Iowa is pretty awesome.

And for those reading back home, no I am not the only black person in town, thank you very much.

Now back to Ella. She is a phenomenal young woman, and she is going to go so far in her life. She is the type of person you want to return home after college to help make an impact on the community.

Why would you deter a person that brings so much to the table from wanting to come home?

I’m not here to judge anybody for how they live their life. My personal faith tells me that there is only One Being who can judge us all, but I want to close this week’s Take with a quote from Ella I couldn’t fit into the original story.

“It was really tough,” Daft said of coming out. “But times are changing. There are a lot of people who will say, ‘Just sit back and wait, it’ll get better.’ But, what I think is really important to recognize is all the people that are working to make it get better right now ... American citizens should feel comfortable with who they are and should know that there is a community out there that supports them.”

Staff writer Ty Rushing may be contacted at (641) 792 312, ext. 426, or at [trushing@newtondailynews.com](mailto:trushing@newtondailynews.com) via email.

# Reader: Only scholastic achievement, not homosexuality, should be commended

Published: Tuesday, May 28, 2013 12:37 p.m. CDT

## To the editor:

As one of our Newton churches posted on its sign out front recently: "God's Word is not multiple choice."

I am responding to Ty Rushing's column in last Wednesday's Daily News, defending his support of Newton Senior High School graduate Ella Daft and her accomplishments. Her accomplishments and energy scholastically are to be commended, and she as a person is to be loved.

But, a choice she has made to publically and actively defend, further and encourage homosexuality is not to be commended.

See Romans 1:18 through 2:16, Leviticus 20:13 and 1 Corinthians 6:9 through 7:6. Most people are aware of the Ten Commandments (whether they choose to follow them or not) as the laws in this country now are based on most of them.

There is nothing detrimental in the Commandments which are the tip of the iceberg in God's direction, guidance and commands in the Bible therefore we would agree we do not honor and condone murder and hate crimes, for instance. We certainly do not encourage them, either.

In fact, the whole base of our country's founders were based on the Bible, remember?

For Ella Daft to encourage homosexuality is in complete rebellion to God's Word, which our country was blessed with. We are all sinners, but to continue in sin leads to depravity of the mind and increased sin.

No sin is more acceptable or more excusable, as all sin needs to be genuinely addressed and repented of and discontinued for 2 Corinthians 7:14 to occur. To encourage and support homosexuality is a sin.

Shame on the school board, teachers and parents for allowing this in our schools when many students (should be all) are just beginning to experience sexual desires and can be easily confused or encouraged to acceptedly engage in actions they are not supposed to submit to at this point in their life (1 Peter 4:17).

As far as church doctrine and mentoring from a church amid the encouragement article not all churches preach God's only Word, The Bible. See 1 Timothy 3 11. A biblical church or school would not abandon a person with homosexual tendencies, but would support, encourage and counsel for

these thoughts and behaviors to stop.

We are all born into sin, but we don't have to support and encourage it. I'm not homophobic. I am sin o phobic.

**Melinda Burgess**

**Newton**

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# **EXHIBIT 2**

## Earning public trust our priority

Published: Tuesday, May 6, 2014 11:22 a.m. CDT • Updated: Tuesday, May 6, 2014 12:54 p.m. CDT



The First Amendment prohibits the making of any law that impedes the free exercise of religion, abridges freedom of speech, infringes on the freedom of the press, interferes with the right to peaceably assemble, or prohibits the petitioning of government for redress of grievances.

The First Amendment *does not* eliminate responsibility and accountability for one's words and actions.

As reported on page 2 of today's newspaper, Bob Eschliman is no longer the editor of the Newton Daily News.

Last week, he expressed an opinion on his personal blog that in no way reflects the opinion of the Newton Daily News or Shaw Media. While he is entitled to his opinion, his public airing of it compromised the reputation of this newspaper and his ability to lead it.

Shaw Media's "Statement of editorial principles," which can be read in full by clicking on the link at the bottom of [NewtonDailyNews.com](#), starts with this:

"Because journalists subject people and institutions to intense and constant scrutiny, we must maintain the highest principles in our conduct. Our integrity is our most valuable asset. Without it, we lose the public trust invested in us by the First Amendment of the U.S. Constitution."

In the past week, we have lost some of that public trust that is so vital to our existence. Today, we hope to begin earning it back.

There will be some who will criticize our action, and mistakenly cite Mr. Eschliman's First Amendment rights as a reason he should continue on as editor of the Newton Daily News.

As previously stated, he has a right to voice his opinion. And we have a right to select an editor who we believe best represents our company and best serves the interests of our readers.

We take our responsibility as a media company seriously. Our Promise is to provide relevant information, marketing solutions for our business partners, and to advocate for the communities we serve. To be effective advocates, we must be able to represent the entire community fairly.

We appreciate the feedback from readers that we've received in the past week. This is your newspaper, and once again you've shown how deeply you care about it.

We thank everyone for their concern, and we look forward to continuing to serve you into the future.

*John Rung is president of Shaw Media, owner of the Newton Daily News.*

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