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July 24, 2015

U.S. District Judge Joseph F. Bianco
Long Island Federal Courthouse
814 Federal Plaza
Central Islip, New York 11722

RE: Zarda v. Altitude Express, Inc. & Ray Maynard, 10 Civ 4334 (JFB)

Dear Judge Bianco:

To respond briefly to Mr. Zabell's letter, he does not state a reason not to reinstate the Title VII claim, at least for the purposes of clarification on appeal. You owe deference to the EEOC's interpretation. We know what Maynard's defense is - customer complaint, etc. - but we have response to that for the jury, specifically that the recording of the termination interview mentioned Mr. Zarda's sharing the information of his sexual orientation with a customer. See <https://www.youtube.com/watch?v=APQs-0d9TkE> at 1:39 (Maynard: "it's about your personal life, talking to people about it."). The customer complaint was grounded in sexual orientation discrimination, ipso facto it could not be a reason to terminate plaintiff. See Chaney v. Plainfield Health Care Ctr., 612 F.3d 908, 913 (7th Cir.2010) (customer preferences do not count when administering the civil rights laws). We also know that Maynard will argue that he knew of plaintiff's sexual orientation when he hired him for the last season; however, as Richard Winstock testified, he (Winstock) was allowed to mention his marital status during jumps, and when Maynard testified at deposition, he saw nothing wrong with this. That's disparate treatment, as you held. So enough about defenses; you have already held they are questions of fact for the jury. A major decision by the agency that administers and interprets Title VII has now held that sexual-orientation discrimination is sex discrimination - not only because of sex stereotypes, but also because it is associational discrimination. The facts in the anonymous case are strikingly similar to the matter at hand.

So while you can make a major decision here, we are only asking you to make a minor procedural holding. It is in the interest of judicial economy to allow the jury (1) to decide the sexual orientation issue, as it already will; (2) to allow it to decide if punitive damages are warranted; and (3) if plaintiff prevails and the appellate courts agree with the EEOC, then we'll come back and litigate attorneys' fees. If not, and a sexual orientation verdict is upheld, a punitive-damages verdict, if any, will be thrown out. All we are asking is for you to reinstate Title VII for the purposes of appeal, and subject to further review, which will allow the jury to give an advisory verdict on punitive damages. The other way -making plaintiff appeal on the EEOC decision and come back to have another punitive damages trial would be a gross waste of judicial resources. I've done damages trial before, and you have to

retry the entire case to determine the punitive damages that are appropriate to the misconduct. It's a messy affair with all sorts of Seventh Amendment issues that arise, and in my case it was weighted toward the plaintiff and resulted in a seven-figure punitive damages verdict that the judge brooded over afterwards for two years.

In my opinion, courts will eventually accept that sexual orientation discrimination is sex discrimination, even if Congress has not carved out a special law pertaining thereto. Neither has Congress enacted laws protecting discrimination against Puerto Ricans, same-sex harassment, or irritable bowel syndrome, but all of those are protected as subsets of larger protected categories under the anti-discrimination laws. The question will be answered eventually and given the interests of judicial economy and the deference owed to the EEOC, you should grant the motion.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory Antollino', with a long horizontal flourish extending to the right.

Gregory Antollino

Cc: Saul Zabell by ecf