No. 18-107

In the
Supreme Court of the United States

R.G. & G.R. HARRIS FUNERAL HOMES, INC.,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent,

and AIMEE STEPHENS,
Respondent-Intervenor.

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

BRIEF FOR *AMICUS CURIAE* GREAT LAKES JUSTICE CENTER IN SUPPORT OF PETITIONER

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STATEMENT OF IDENTITY AND INTERESTS OF *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37, *Amicus Curiae*, Great Lakes Justice Center, submits this brief supporting Petitioner R.G. & G.R. Harris Funeral Homes, Inc.[1]

Amicus Curiae is a non-profit 501(c)(3) organization promoting good governance under the Rule of Law. Our lawyers' experience includes representing national Christian organizations as *Amici Curiae* before this Court, as well as in the highest levels of government in other nations. *Amicus Curiae* works with legislative, executive, and judicial bodies, as well as with citizen groups, to further good governance practices. With experience in all three branches of government, *Amicus Curiae* understands the proper scope of the Article III judicial power and the proper role of the federal judiciary in our constitutional republic. From its experience, it holds special knowledge helpful to this Court about the importance of an unelected court properly determining the meaning of statutory provisions enacted by an elected Congress. *Amicus Curiae,* therefore, files this brief seeking to preserve the constitutional principle of separation of power.

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[1] All parties have consented to the filing of the *amicus curiae* brief in this matter. *Amicus* further state that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this *amicus* brief.

SUMMARY OF THE ARGUMENT

Recognizing the biological and physiological differences between men and women, Congress in Title VII prohibited discrimination based on sex. 42 U.S.C. § 2000e 2(a)(1). The word "sex" in this context means male and female. The Sixth Circuit deliberately refused to apply this plain meaning as enacted by Congress. Enacting new social policy, the Sixth Circuit instead added "transgender and transitioning status" to the classifications covered by the statute. The Sixth Circuit's *de facto* amendment of Title VII changes the word "sex" to additionally include words and meanings appearing nowhere in Title VII or its legislative history. The court's faulty analysis cannot be reconciled with the plain meaning of the words used by Congress when it promulgated the law.

This judicial amendment substitutes the will of a politically unaccountable court for that of a politically accountable Congress and President. By judicially amending Title VII, the Sixth Circuit's Opinion exceeded the scope of its judicial power stated in Article III of the Constitution. Nothing in Article III empowers the court to change or "evolve" the meaning of a federal statute. Moreover, nothing in *Marbury v. Madison*'s assertion that it is the province of the Court to say what the law is, empowers the court to say instead what it prefers the law to be. 5 U.S. (1 Cranch) 137 (1803).

The issues in this case implicate important separation of power concerns vital to proper constitutional governance under the Rule of Law. By changing the meaning of the words of Title VII, the

Sixth Circuit bypassed the constitutionally required lawmaking process delegated exclusively to the politically accountable branches of the Federal government. U.S. Const. art. I. This is especially disconcerting given Congress' ongoing debate over whether to enact the very public policy wrongly forced into existence by the Sixth Circuit. By deliberately disregarding constitutional separation of powers, the Sixth Circuit's ruling undermines this fundamental principle of good governance and the Rule of Law.

Finally, the Sixth Circuit's "interpretation" of Title VII will lead to a substantial infringement of constitutional liberty. The rights threatened by the court's decision include: 1) the constitutional right to bodily privacy; 2) the First Amendment rights of freedom of speech and religious conscience; and 3) the fundamental constitutional liberty and equal protection interests judicially recognized by this Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (holding that the personal right to form one's identity in accordance with his/her beliefs is a substantive due process right. This includes the rights of religious people who define their personal identity, not in their sexuality, but in their faith or love for Jesus Christ).

ARGUMENT

I. THE SIXTH CIRCUIT'S OPINION IS IRRECONCILABLE WITH THE PLAIN MEANING OF TITLE VII.

The Sixth Circuit held that "[d]iscrimination on the basis of transgender and transitioning status" is covered by Title VII. In reaching this erroneous conclusion, the Sixth Circuit refused to apply the plain meaning of the word "sex," as enacted by Congress in Title VII.

In 1964, Congress passed and President Johnson signed Title VII into law. Beyond ending racial discrimination, Title VII sought to rectify the inequity in opportunity women faced in the workforce. *See, e.g., Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 662-663 (9th Cir. 1977); *Sommers v. Budget Mktg., Inc.*, 667 F.2d 748, 750 (8th Cir. 1982) (per curiam).

In relevant part, Title VII makes it:

> an unlawful employment practice for an employer . . . to discharge any individual, or otherwise to discriminate . . . . because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e 2(a)(1).

"Ordinarily, a word's usage accords with its dictionary definition." *Yates v. US,* 135 S. Ct. 1074, 1082 (2015). The word "sex" means male and female. Both standard and legal dictionaries defined sex this way throughout the history of the United States,

including in 1964 when Congress chose to use this word in Title VII. *See, e.g.*, Webster's American Dictionary of the English Language (1828) (defining sex as the "distinction between male and female"); Black's Law Dictionary (1957; 1968; 1979) (indicating the "sum of the peculiarities of structure and function that distinguish a male from a female organism"); Oxford English Dictionary (1961) (defining "sex" as "the sum of those differences in the structure and function of the reproductive organs on the ground of which beings are distinguished as male or female, and of the other physiological differences consequent on these").

The Sixth Circuit, however, deliberately refused to apply the plain meaning of the words in Title VII. Enacting new social policy, the Sixth Circuit instead added "transgender and transitioning status" to the classifications covered by the law. These classifications appear nowhere in Title VII or its legislative history.[2]

In *Frontiero v. Richardson,* this Court recognized "sex" as "an immutable characteristic determined solely by the accident of birth 'like race and national origin.'" 411 U.S. 677,686 (1973); *accord Knussman v. Maryland,* 272 F.3d 625, 635 (4th Cir. 2001) (same, quoting *Frontiero*); *Garcia v. Gloor,* 618 F.2d 264,270 (5th Cir. 1980); *Ulane v. Eastern Airlines, Inc.,* 742 F.2d 1081, 1084 (7th Cir. 1984); *Sommers v. Budget*

[2] *Amicus* rejects the legitimacy of these recently coined terms as unfounded in science or reason and as the self-serving political rhetoric of a small group of activists. *See, e.g.,* R. Reilly, Making Gay Okay – How Rationalizing Homosexual Behavior Is Changing Everything, pp. 11, 47-48, 64, 117-29 (Ignatius Press 2014) (acceptance and promotion of homosexual behavior is based on politics rather than science).

Mktg., Inc., 667 F.2d 748, 750 (8th Cir. 1982); *Holloway v. Arthur Anderson & Co.,* 566 F.2d 659, 664 (9th Cir. 1977).

Controlled necessarily by an individual's chromosomal constitution, "sex" is an objective reality. Chromosomes are not a social construct. "Sex" is immutable, innate, and a biological truth. *See* Lawrence S. Mayer & Paul R. McHugh, *Sexuality and Gender; Findings from the Biological, Psychological, and Social Sciences*, New Atlantis at 89 (Fall 2016). *See also* Francisco I. Reyes et al., *Studies on Human Sexual Development,* 37 J. of Clin. Endocrinology & Metabolism (1973) at 74-78; Michael Lombardo, *Fetal Testosterone Influences Sexually Dimorphic Gray Matter in the Human Brain,* 32 J. of Neuroscience 674080 (2012); P.C. Sizonenko, *Human Sexual Differentiation,* Geneva Foundation for Medical Education and Research (2017).

As relevant here, the purpose of Title VII was to prevent discrimination based on a person's immutable biological sex. By necessity, this means Congress based the law on the premise that distinct, genetic differences between a man and a woman exist. Proponents of "transgenderism" or "gender fluidity," however, contend no distinction between the sexes exist. It cannot be both ways. *See generally* Michelle A Cretella, *Gender Dysphoria in Children and Suppression of Debate,* 21 J. of Am. Physicians & Surgeons (2016) at 50, 51. Either a distinction between the sexes exists, or not. Truth must correspond to reality for it to really be true. It is especially troubling, therefore, that the Sixth Circuit's analysis rejected

physiological and biological truth for a linguistic lie. The entire purpose of Title VII to prevent discrimination based on sex is rendered useless if every person in the country can legally self-identify as both male and female.

Congress intended Title VII to protect everyone from discrimination based upon their immutable biological sex, regardless of their self-perceived gender identity or "transitioning status." Thus, Title VII, as passed and implemented by the politically accountable branches of the government: 1) requires employers to not discriminate on the basis of biological sex; and 2) includes no provisions, legal or otherwise, pertaining to the special treatment of "transgenderism."

Throughout its long history, no one ever questioned the clear meaning of this legislation. The Sixth Circuit's social engineering experiment must not stand.[3]

[3] Indeed, unintended variations and results will emerge if this Court upholds the Sixth Circuit's flawed jurisprudential analysis. For example, what happens when a litigant asks whether a white person may self-identify as a racial minority, in order to receive benefits reserved for that minority? If biological sex is fluid and based upon self-identity, then why would racial classifications be any different? The Sixth Circuit's nonsensical analysis will inevitably lead to such absurd places.

II. THE SIXTH CIRCUIT'S OPINION BYPASSED THE REQUIRED LAWMAKING PROCESS DELEGATED EXCLUSIVELY IN THE CONSTITUTION TO CONGRESS AND THE PRESIDENT.

By changing the meaning of the word "sex" in Title VII, the Sixth Circuit bypassed the constitutionally required lawmaking process delegated exclusively to the politically accountable branches of the Federal government. Article I of the Constitution expressly provides:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
>
> ***
>
> Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it ....

U.S. Const. art. I, sec 1, 7

By judicially amending Title VII, the Sixth Circuit panel exceeded the scope of its judicial power stated in Article III of the Constitution. In pertinent part, Article III provides that:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such

> inferior Courts as the Congress may from time to time ordain and establish . . . .
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. . . .

U.S. Const. art. III, § 1, 2).

By enumerating and separating power, we see the Framers' design of limited government. U.S. Const. arts. I, II, III. No enumerated judicial power exists for the judiciary to amend the duly enacted statutory law of the nation. Nothing in Article III empowers the Court to change or "evolve" the meaning of a federal statute enacted by Congress and the President. Moreover, nothing in *Marbury v. Madison*'s assertion that it is the province of the Court to say what the law is, empowers the Court to say instead what it prefers the law to be. 5 U.S. (1 Cranch) 137 (1803).

The Sixth Circuit, wandering far beyond the scope of its Article III power, improperly substituted the political preferences of unelected judges for the clear legislative intent of Congress. The Sixth Circuit redefined the word "sex" to mean "transitioning status" and "transgender" merely because a panel of unelected judges preferred it so. Under Article III, a court must "apply, not amend, the work of the People's representatives." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1726 (2017).

The Sixth Circuit's judicial policymaking is especially disconcerting given Congress' ongoing debate

over whether to enact the very public policy at issue. *See, e.g.,* H.R. 5, 116th Cong. (1st Sess. 2019). As Congress properly debates whether to amend Title VII, an unelected judiciary ought not improperly usurp the peoples' prerogative. During the ratification process of our Constitution, Alexander Hamilton clearly explained:

> The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body.

The Federalist Papers, No. 78

Federal Judges hold lifetime appointments so that they may apply existing law to fairly resolve disputes without fear of political consequences. With this constitutionally prescribed independence comes responsibility. A judge must exercise judgment based on what the law says, not based on what the judge wills it to say. The Sixth Circuit's deliberate usurpation of Congressional and Presidential power undermines good governance and mocks the Rule of Law. To restore the proper separation of powers provided in the Constitution, *Amicus Curiae* asks this Court to reverse the decision of the Sixth Circuit.

III. THE SIXTH CIRCUIT'S OPINION WILL LEAD TO A SUBSTANTIAL INFRINGEMENT OF CONSTITUTIONAL LIBERTY.

If this Court upholds the Sixth Circuit's revision of Title VII, it inevitably will lead to authorities infringing the constitutional rights of citizens. Some of the rights threatened by the lower court's decision include: 1) the constitutional right to bodily privacy; 2) the First Amendment rights of freedom of speech and religious conscience; and 3) the fundamental constitutional liberty and equal protection interests judicially recognized by this Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (*e.g.,* the personal identity rights of employers and employees who find their personal identity not in their sexuality but in their faith).

A. Upholding the Sixth Circuit Opinion will Lead to the Government Infringing on the Right to Bodily Privacy.

Every person has a fundamental right to bodily privacy. *See Griswold v. Connecticut*, 381 U.S. 479 (1965); *De May v. Roberts*, 46 Mich 160 (1881); U.S. Const. amend III, IV. The right to bodily privacy includes a right to privacy in one's fully or partially unclothed body. It also includes the right to be free from the risk of intimate exposure of oneself to the opposite sex, or being forced to endure such exposures by the opposite sex. *See e.g., Canedy v. Boardman*, 16 F.3d 183 (7th Cir. 1994); *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963) (holding, "[t]he desire to shield one's unclothed figure from views of strangers, and

particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity").

Historically, our nation's laws protected citizens from suffering the risk of exposing their bodies, or their intimate activities, to the opposite sex. The same is true of forcing them to be exposed to members of the opposite sex in places like bathrooms, dressing rooms, and locker rooms. For example, early in our history, the law allowed legal actions against "Peeping Toms." *See e.g., Commonwealth. v. Lovett*, 4 Pa. L.J. Rpts. (Clark) 226, 226 (Pa. 1831). As American law developed after the nation's founding, it disfavored the surreptitious viewing of its citizens to protect their reasonable expectation of privacy. *See* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890). This protection is heightened for children. For example, federal law makes it a crime to possess, distribute, or even view images of naked children. 18 U.S.C. § 1466A(a)(1) (2011).

In the late 1800s, as women began entering the workforce, the law developed to protect privacy by mandating that workplace restrooms and changing rooms be separated by sex. Massachusetts adopted the first such law in 1887. Act of Mar. 24, 1887, ch. 103, § 2, 1887 Mass. Acts, 668, 669.

By 1920, 43 of the then 48 states had similar laws protecting privacy by mandating sex-separated facilities in the workplace. *See* George Martin Kober, *History of Industrial Hygiene and its Effects on Public Health, in* A HALF CENTURY OF PUBLIC HEALTH 361, 377 (Mazyck P. Ravenal ed., 1921). Because of our national commitment to protect citizens from the risk

of being exposed to the anatomy of the opposite sex, as well as the risk of being seen by the opposite sex while attending to private, intimate needs, sex-separated restrooms and locker rooms are ubiquitous. Using restrooms and locker rooms separated by sex are an American social and modesty norm. Historically, the purposeful exposure of one's self to the opposite biological sex has been considered wrongful, and possibly even criminal, behavior. *See e.g., Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 568 (1991). If a government holds the power to require an employer to compel its employees to disrobe or risk being unclothed in the presence of the opposite sex in order to use its facilities, then little personal liberty and privacy involving our bodies remain.

The Sixth Circuit's policy allows a biological man the right of entry to, and use of, the women's bath and locker rooms any time he wishes as long as he claims to identify as female or transgender. The policy requires citizens to risk being intimately exposed to those of the opposite sex merely because a member of the opposite sex want to see them and is willing to state a belief concerning his or her own gender. Common sense and common decency belie the Sixth Circuit's fundamentally flawed analysis and radical, erroneous conclusions in this case.

Because the Sixth Circuit's amendment of Title VII will lead to authorities infringing on the constitutional right to bodily privacy, *Amicus Curiae* urges this Court to reverse.

B. Upholding the Sixth Circuit Opinion will Lead to Government Infringing on the Right to Freedom of Speech and Religious Conscience.

The Sixth Circuit's rewriting of Title VII will lead to censorship and punishment for citizens whose valid religious, political, and cultural views necessarily conflict with the "gender identity" political agenda. For these employers, the Sixth Circuit's interpretation of Title VII will lead to unconstitutional interference with, and discrimination against, their sincerely held religious beliefs, as well as their freedom of expression (*e.g.,* by banning any dissent to the federally-mandated acceptance of sexual fluidity). Government must not use its power in ways hostile to religion or religious viewpoints. *See e.g., Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,* 138 S. Ct. 1719, 1731 (2018).

Government ought to protect and not impede the free exercise of religious conscience. *See e.g., Trinity Lutheran Church of Columbia, Inc. v. Comer,* 137 S. Ct. 2012, 2022 (2017) (holding government violates Free Exercise Clause if it conditions a generally available public benefit on an entity giving up its religious character); *Burwell v. Hobby Lobby Stores, Inc.,*134 S. Ct. 2751, 2775 (2014) (holding Religious Freedom Restoration Act applies to federal regulation of activities of closely held for profit companies); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC,* 565 U.S. 171, 196 (2012) (barring employment discrimination suit brought against religious school). *See also,* E.O. 13831; E.O. 13798, 82 FR 21675 (May 9, 2017).

The First Amendment to the United States Constitution protects individuals against government actions substantially interfering with the free exercise of religion or abridging freedom of speech or assembly. U.S. Const. amend. I. Under the Constitution, no Federal agency can dictate what is acceptable and not acceptable on matters of religion and politics. The government cannot silence and punish all objecting discourse to promote one political viewpoint. Yet, this is exactly what the Sixth Circuit's decision enables. Inviting authorities to limit the viewpoint of allowable speech, the ruling by the unelected Sixth Circuit compels employers to politically normalize LGBTQ behavior.

To be sure, government infringement of religious conscience and content-based regulation of expression face strict scrutiny. *Turner Broadcasting Syst. v. FCC* 512 U.S. 622, 641 (1994); *Lambs Chapel v. Center Moriches Sch. Dist.,* 508 U.S. 384 (1993); Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993), 42 U.S.C. § 2000bb–1.

Not even this high standard of review, though, stands in the way of an unelected judicial panel determined to enact a preferred political preference. *See EEOC v. Harris Funeral Homes, Inc.,* No. 16-2424, slip op. at 35-45 (6th Cir. March 7, 2018) (deeming a compelling government interest exists in eradicating discrimination based on the court's new classifications, and that enforcement under the statute is the least restrictive means of accomplishing this interest).

If this Court affirms the Sixth Circuit's holding, we are one Supreme Court case away from the First Amendment never serving again as a limit on the exercise of government power. Without the benefit of political debate, religious people will be forever judicially chilled from participating in the marketplace of ideas.

If not reversed, the Sixth Circuit's decision ultimately requires those subject to Title VII to adopt, implement, and enforce policies that promote the LGBTQ lifestyle. The judicially mandated support, encouragement, and affirmation of LGBTQ behaviors unavoidably conflicts with many people whose sincerely held religious conscience irreconcilably collides with this lifestyle. They will be forced to either violate their religious conscience and endorse a pro-LGBTQ message or face punishment. Nowhere in the Sixth Circuit's revision of Title VII does the court protect dissenting opinions or sincerely held religious conscience. That court has apparently forgotten its own dictate that "[t]olerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination." *Ward v. Polite*, 667 F.3d 727, 735 (6th Cir. 2012).

As this Court has emphasized, government officials are not thought police. "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." *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). The Sixth Circuit's new mandate patently violates this critical principle.

The Sixth Circuit claims to promote non-discrimination, by discriminating against, silencing, and punishing those who cannot and do not support the LGBTQ lifestyle. The Federal Courts cannot and should not create an environment that will undoubtedly chill the First Amendment freedoms of those citizens who disagree with the LGBTQ political agenda for valid religious, political, and cultural reasons. Because the Sixth Circuit's amendment of Title VII will lead to authorities infringing on the First Amendment rights of citizens, *Amicus Curiae* urges this Court to reverse.

C. Upholding the Sixth Circuit Opinion will Lead to Government Infringing on the Right to Personal Identity and Autonomy.

The Sixth Circuit's Amendment of Title VII will lead to substantial infringements on the constitutional liberty and equal protection interests recognized by the Supreme Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). This Court's ruling in *Obergefell* created a new constitutional right of personal identity for all citizens. This Court held that one's right of personal identity precluded any state from proscribing same-sex marriage. In *Obergefell*, the Justices in the majority held: "The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity." *Id.* at 2593.

Because this Court defined a fundamental liberty right as including "most of the rights enumerated in the Bill of Rights," and "liberties [that] extend to

certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs," this new right of personal identity must also comprehend factual contexts well beyond same-sex marriage. *Id.* at 2597-98. Clearly, this newly created right of personal identity applies not just to those who find their identity in their transgenderism and gender preferences—but also to citizens who define their identity by their religious beliefs.

Many Christian people, for example, find their identity in Jesus Christ and the ageless, sacred tenets of His Word in the Holy Bible. For followers of Jesus, adhering to His commands is the most personal choice central to their individual dignity and autonomy. Christian people whose identity inheres in their religious faith orientation, are entitled to at least as much constitutional protection as those who find their identity in their gender preferences. There can be no doubt that this newly created right of personal identity protects against government authorities who legislate to persecute, oppress, and discriminate against religious people.

The Sixth Circuit's revision of Title VII will inevitably lead to authorities infringing on the personal identity, liberty, and equal protection rights this Court established in *Obergefell*. There this Court expressly acknowledged:

> The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives

> and faiths, and to their own deep aspirations to continue the family structure they have long revered.

Id. at 2607

According to *Obergefell*, then, beyond the First Amendment religious liberty protections specifically enshrined in the Bill of Rights, the new judicially-created substantive due process right to personal identity now provides Christian and other religious people additional constitutional protection. Henceforth, government action not only must avoid compelling religious citizens to participate in policies contrary to their First Amendment freedoms of speech and religion, but it must also refrain from violating their personal identity rights secured by substantive due process and equal protection.

Because the lower court's amendment of Title VII will inevitably lead to authorities infringing the personal religious identity rights that this Court created in *Obergefell*, *Amicus Curiae* urges this Court to reverse the decision of the Sixth Circuit.

CONCLUSION

For the reasons provided in this brief, *Amicus Curiae* urges this Court to reverse the decision of the Sixth Circuit. If we allow an unelected judiciary to promulgate statutory policy, we merely create an illusion of a nation under the Rule of Law. This Honorable Court should preserve the constitutional

separation of powers by reversing the Sixth Circuit's extraordinary overreach in this case.

Respectfully submitted,

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