No. 18-107

IN THE
Supreme Court of the United States

R.G. AND G.R. HARRIS FUNERAL HOMES, *Petitioner*,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *ET AL.*, *Respondents*.

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

Brief *Amicus Curiae* of Public Advocate of the United States, I Belong Amen Ministries, David Arthur, Conservative Legal Defense and Education Fund, Restoring Liberty Action Committee, and Center for Morality in Support of Petitioner

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

Public Advocate of the United States is a nonprofit social welfare organization, exempt from federal income tax under Internal Revenue Code ("IRC") section 501(c)(4). I Belong Amen Ministries is a ministry headed by David Arthur. Conservative Legal Defense and Education Fund is a nonprofit educational and legal organization, exempt from federal income tax under IRC section 501(c)(3). Center for Morality and Restoring Liberty Action Committee are educational organizations.

Amici organizations were established, *inter alia*, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* filed an *amicus* brief in this case in the U.S. Court of Appeals for the Sixth Circuit on May 24, 2017, along with two *amicus* briefs on a similar issue in Zarda v. Altitude Express: one in the Second Circuit on July 26, 2017, and one in this Court on July 2, 2018.

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[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to its filing; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

This case comes to this Court to correct a perversion of law that has occurred in three circuit courts. Title VII's prohibition of employment discrimination "because ... of sex," has not changed since the law was enacted. For decades, that prohibition has understood to refer to status as men or women. However, recently these circuit courts have engaged in judicial interpretative updating of the statute. Last year, in Hively v. Ivy Tech Cmty. College of Ind., the Seventh Circuit interpreted "because of sex" to include sexual orientation, and in February of this year, the Second Circuit reached the same conclusion in Zarda v. Altitude Express. Then, in March, the Sixth Circuit decided the present case, stretching Title VII to encompass discrimination based on gender identity. The law has not changed, but the lower courts have changed what it means, doing exactly that against which Alexander Hamilton warned: "It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature...." Federalist No. 78.

From beginning to end, the Sixth Circuit panel utterly failed to exercise independent judgment whether the transgender claims made by the funeral home employee were either true or real. Instead of adjudicating a legal case between two contending parties, the court treated the employee more like a patient on a psychiatrist's couch than a litigant before the bar of justice. In short, the court below evidenced a "systematic bias" deferring to the employee whose

interests were in line with EEOC policy that extends government protection against discrimination because of sex to transgendered individuals.

The issue of special rights for homosexuals and transgendered persons is highly contentious, and cewrtainly the federal judiciary has no authority to twist the words of Title VII to satisfy the political demands of homosexual advocates even if it wishes that Congress should do so. Most of the political support for such rights is based on the erroneous premise that sexual orientation is immutable, but that is a vain imagination (*Romans* 1:21) designed to rationalize and excuse sinful behavior. The great danger of the "political correctness" is that it prevents reason and rational thought. Certainly erroneous imaginations and political correctness must be rejected as the basis for judicial usurpation of the legislative function, and the lower federal courts must be reigned in before more damage is done to the rule of law.

ARGUMENT

I. UNDER THE GUISE OF EVOLUTIONARY LAW, THE SECOND, SIXTH, AND SEVENTH CIRCUIT COURTS HAVE AMENDED TITLE VII'S PROTECTION AGAINST SEX DISCRIMINATION TO EXTEND TO HOMOSEXUALS AND TRANSGENDERS.

Congress' Title VII prohibition of certain discrimination in the workplace based on sex employs abundantly simple and clear language. Additionally, the history of its adoption provides no clues to indicate

that Congress meant anything other than what it clearly stated. *See* 42 U.S.C. § 2000e-2. As Chief Justice Rehnquist noted: "the bill quickly passed as amended [to include sex], and we are left with little legislative history to guide us in interpreting the Act's prohibition against discrimination based on 'sex.'" Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986).

For a half-century, the courts unanimously and uniformly have applied the text "because of ... sex" exactly as those terms were used in 1964, to constitute a prohibition against discrimination in most cases against an applicant or employee based on whether that person was a woman or a man. For example, the Sixth Circuit itself had held that "[a]s is evident from the ... language [of Title VII], sexual orientation is not a prohibited basis for discriminatory acts under Title VII." Vickers v. Fairfield Med. Ctr., 453 F.3d 757, 762 (6th Cir. 2006).

A decade after that law's enactment, LGBTQ advocates began to demand that Congress amend Title VII to protect homosexuals, and more recently, to protect "transgenders." Indeed, in nearly every year since 1975, legislation has been introduced in Congress to expand the Civil Rights Act to cover discrimination based on "sexual orientation."[2] Thus, even LGBTQ advocates have understood that "sexual orientation"

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[2] C. Joslin, "Protection for Lesbian, Gay, Bisexual, and Transgender Employees under Title VII of the 1964 Civil Rights Act," 31 Human Rights 14 (ABA Summer 2004).

was never covered by Title VII's prohibition against discrimination "because of sex."

Baldwin v. Foxx. Dissatisfied with Congress to yield to their demands, LGBTQ advocates relentlessly pressured the Obama Administration to employ the federal bureaucracy to re-interpret the 1964 law, and hope that the courts would yield to political pressure as well. The Obama Administration was more than happy to oblige this radical agenda. Thus, just over a half-century after Title VII was enacted, in Baldwin v. Foxx, No. 0120133080 (July 15, 2015), the Equal Employment Opportunity Commission ("EEOC") ruled that, regardless of what the courts have previously ruled, Title VII does in fact prohibit sexual orientation discrimination. The agency asserted "that sexual orientation is inherently a 'sex-based consideration,' and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII." Baldwin at 6.

Evans v. Georgia Regional Hospital. Meanwhile, numerous cases were percolating throughout the federal system, inviting the courts to similarly amend the law. On March 10, 2017, the first of these Obama-era efforts was unsuccessful, as the Eleventh Circuit rejected the claim of a lesbian in Evans v. Georgia Regional Hospital, 850 F.3d 1248 (11th Cir. 2017). However, Judge Robin S. Rosenbaum strongly dissented, taking the view that discrimination against a lesbian for failing "to conform to the employer's image of what women should be — specifically, that women should be sexually attracted to men only..." is "discrimination 'because of ... sex.'"

Evans at 1261 (Rosenbaum, J., dissenting). The only authority for this contention was this Court's 1989 decision involving so-called "sex stereotyping" in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).[3]

Hively v. Ivy Tech Community College. But, by the next month, on April 4, 2017, the *en banc* Seventh Circuit broke ranks, throwing off any pretense of lawfulness, ruling that "discrimination on the basis of sexual orientation is a form of sex discrimination." Hively v. Ivy Tech Community College, 853 F.3d 339, 341 (7th Cir. 2017). First, the Hively court dismissed all traditional interpretative approaches:

> One can stick, to the greatest extent possible, to the language enacted by the legislature; one could consult the legislative history that led up to the bill that became law; one could examine later actions of the legislature ... for whatever light they may shed; and one could use a combination of these methods. [*Id.* at 343.]

Then it employed a modernized test that freed the court to "consider what the correct rule of law is now in light of the Supreme Court's authoritative interpretations, not what someone thought it meant one, ten, or twenty years ago." *Id.* at 350.

Concurring in the decision, Judge Richard Posner took a more intellectually honest approach, albeit one

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[3] *See* a discussion of inapplicability of Price Waterhouse decision in *Amicus Brief* of Public Advocate, *et al.*, at 6-10 (May 24, 2017) filed when this case in the Sixth Circuit.

based on contempt for the rule of law and favoring the whim of an activist judiciary. He openly admitted that what the court was doing was "judicial interpretative updating" — *i.e.*, amending statutes by the judicial fiat. Judge Posner did not hide that "Title VII receives today a new, a broader, meaning," even though "[i]t is well-nigh certain that homosexuality, male or female, did not figure in the minds of the legislators who enacted Title VII." *Id.* at 353-54. Daringly, Judge Posner elaborated:

> **while in 1964 sex discrimination meant discrimination against men or women** as such and not against subsets of men or women ... **the concept of sex discrimination has since broadened** in light of the recognition, which barely existed in 1964, that there are significant numbers of both men and women who have a sexual orientation that sets them apart from the heterosexual members of their genetic sex (male or female), and that while they constitute a minority their sexual orientation is not evil and does not threaten our society.... I would prefer to see us acknowledge openly that today **we, who are judges** rather than members of Congress, **are imposing on a half-century-old statute a meaning of "sex discrimination" that the Congress that enacted it would not have accepted**. [*Id.* at 356-57 (emphasis added).]

In Hively, Judge Diane Sykes dissenting, charging her majority colleagues with exceeding their

constitutional authority in giving statutes new meaning:

> The court has arrogated to itself the power to create a new protected category under Title VII. Common-law liability rules may judicially **evolve** in this way, but statutory law is fundamentally different. Our constitutional structure requires us to respect the difference. [Hively at 373 (Sykes, J., dissenting) (emphasis added).]

Zarda v. Altitude Express. The Hively decision emboldened the *en banc* Second Circuit to follow suit on February 26, 2018, reversing its own line of precedent by holding that Title VII bans discrimination based on sexual orientation. *See* Zarda v. Altitude Express, 883 F.3d 100 (2nd. Cir. 2018) (pending on petition for writ of certiorari, Altitude Express v. Zarda, No. 17-1623). The Second Circuit no longer found the text clear, stating that "we must construe the text in light of the entirety of the statute as well as relevant precedent." Zarda at 112. The Second Circuit grounded its decision in legal evolution squarly on the view that:

> [L]egal doctrine **evolves** and in 2015 the EEOC held, for the first time, that "sexual orientation is inherently a 'sex-based consideration;' accordingly an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII...." Since 1964, the legal framework for evaluating Title VII claims has

> **evolved** substantially. [Zarda at 107, 131 (emphasis added).]

EEOC v. Harris Funeral Home. Less than a fortnight later, the Sixth Circuit joined the evolution parade with its decision on March 7, 2018, the review of which is now being sought — EEOC v. Harris Funeral Home, 884 F.3d 560 (6th Cir. 2018).

Bostock v. Clayton County. On May 10, 2018, the Eleventh Circuit held fast, and followed its earlier decision in Evans, holding that "'[d]ischarge for homosexuality is *not* prohibited by Title VII'" and "rejected the argument that Supreme Court precedent ... supported a cause of action for sexual orientation discrimination under Title VII." Bostock v. Clayton Cty. Bd. of Comm'rs, 723 Fed. Appx. 964, 964-65 (11th Cir. 2018). Thereafter, and while a petition for certiorari is pending before this Court (No. 17-1618), the Eleventh Circuit *sua sponte* considered rehearing and then declined to rehear Bostock *en banc*, providing two dissenting circuit judges a platform to state their belief that the Eleventh Circuit should follow the Second and Seventh Circuits in judicially updating Title VII to "prohibit[] discrimination against gay and lesbian individuals because they fail to conform to their employers' views when it comes to whom they should love." Bostock v. Clayton Cty. Bd. of Comm'rs, 894 F.3d 1335, 1338 (11th Cir. 2018) (denying rehearing *en banc*) (Rosenbaum, J., dissenting from the denial of rehearing *en banc*).

Several simple facts can be concluded from this review.

First, the text of Title VII is clear and unambiguous and has been universally viewed to mean discrimination only based against women or men, because of their status as a woman or man, for a half-century.

Second, there is no legislative history which has been discovered which supports any reinterpretation of Title VII.

Third, judges have no constitutional authority, such as Judge Posner claimed for himself, to "impose" on a half-century-old law a meaning that they prefer based on their personal political views.

Fourth, judges may not suspend their judicial independence and adopt the view of a politicized administrative agency which has made a political decision to satisfy a political constituency.

And lastly, for all the reasons set out above, the duty falls to this Court to reject and correct the shameful and lawless exercise of power by the Sixth Circuit, which embraced the approach revealed by now-retired Circuit Court Judge Posner in his exit interview:

> **I pay very little attention** to legal rules, **statutes**, constitutional provisions. A case is just a dispute. The first thing you do is ask yourself — **forget about the law** — what is a sensible resolution of this dispute? [A. Liptak, "An Exit Interview With Richard

Posner, Judicial Provocateur," *New York Times* (Sept. 11, 2017) (emphasis added).]

Clearly, Judge Posner's statements demonstrate that the circuit courts have "so far departed from the accepted and usual course of judicial proceedings" that this Court's supervisory powers should be exercised and certiorari should be granted. Supreme Court Rule 10(a).

II. HAVING FAILED TO EXERCISE THE INDEPENDENT JUDGMENT REQUIRED OF AN ARTICLE III COURT, THE SIXTH CIRCUIT'S DECISION IS VOID AND UNENFORCEABLE.

The hallmark of judicial power is independent judgment. *See* Federalist No. 78, G. Carey & J. McClellan, eds. The Federalist at 402-03 (Liberty Found.: 2001). Indeed, as Alexander Hamilton put it: "The complete independence of the courts of justice is peculiarly essential in a limited constitution." *Id.* at 403. Or, more recently, as Columbia University Professor Philip Hamburger has asked: "even where agencies have congressional authority to exercise their judgment about what the law is, how can this excuse the judges from their constitutional duty, under Article III, to exercise their own independent judgment?" *See* P. Hamburger, "Chevron Bias," 84 GEO. WASH. L. REV. 1187, 1189 (2016).

The requirement of independent judgment has arisen recently in this Court's expressed misgivings about its own rules providing "deference" to agency

interpretation of statutes under the notorious Chevron doctrine. For example, Justice Thomas "note[d] that [the EPA's] request for deference raises ... serious separation-of-powers questions." Michigan v. EPA, 576 U.S. ___, 135 S.Ct. 2699, 2712 (2015) (Thomas, J.. concurring). But the concern runs even beyond the duties of an Article III court in that, as Professor Hamburger points out, the absence of judicial independence caused by deference to agency statutory interpretation raises serious Article V due process concerns — including "systematic bias in favor of the government and against other parties." Hamburger at 1195. More bluntly and more tellingly, Professor Hamburger warns that "when judges adopt the record or factual claims of one of the parties, in place of a judicial record, they are engaging in systematic bias in favor of one party's version of the facts." *Id.* at 1203. And that is precisely what has happened here.

A. The Court's Threshold Decision to Use Female Pronouns to Refer to Stephens Is Prejudicial Error.

Beginning with the very first sentence, the court below – acknowledging that "Aimee Stephens ... was **born biologically** male" – quickly drops a footnote which reads: "We refer to Stephens using female pronouns, **in accordance with the preference she has expressed** through her briefing to this court."[4] EEOC v. R.G., 884 F.3d 560, 566, n.1 (6th Cir. 2018) (emphasis added). But the matter before the court is

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[4] *See generally* M. Charen, "Is Christine Hallquist's Primary Victory Really 'Historic'?" National Review Online (Aug. 17, 2018).

not a social event, in which "[i]t's important to be polite and respectful,"[5] but a lawsuit between two contending parties in which the central issue is whether the Plaintiff is a male or a female. Judges are not free to choose to respond with "tolerance and understanding,"[6] as if confused persons like Stephens are their patients on the proverbial psychiatric couch, instead of plaintiffs in a legal dispute at the bar of justice. Nor may a panel of three federal appellate judges act as if it is no "business" of theirs whether Stephens is identified as a "he" or a "she," particularly after the panel found that as a matter of fact "Stephens ... **was born** biologically male." R.G. at 566 (emphasis added).[7]

Indeed, by its unilateral decision to conform its written opinion to Stephens' newly discovered "preference" for female pronouns — presumably because "people deserve to be called what they choose to be called"[8] — the court below implicitly adopts Stephens' view that he was not born biologically a man, but was merely "'**assigned** male at birth.'" *See id.* at 567 (emphasis added). After all, if Stephens' sexual identity as a male is only arbitrarily designated

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[5] *See* M. Charen.

[6] *Id.*

[7] If litigants are now authorized to choose their own pronouns, one wonders how the Sixth Circuit would treat a request by Grant Strobl to be called "His Majesty," as he did as a student at the University of Michigan.

[8] *See* M. Charen.

or appointed, not fixed by nature, who is to say that one's sex might be unfixed or reassigned? Inadvertently, in its effort to be nice, the court below adopted Stephens' obvious strategy that, if Stephens is referred to as a "she" or a "her," then Stephens would be treated accordingly — notwithstanding the fact that Stephens was born, and remains, biologically male. Indeed, the panel opinion refers to Stephens as a "she" or "her" numerous times, such that the ordinary reader would have forgotten that at the heart of the case is the issue of whether Stephens' employer dismissed Stephens "because ... of sex," or because of Stephens' gender self-identification. The court offers no evidence, reason, or justification to support the claim that a person who is born male is entitled to be identified as a female, but simply defers to Stephens' self-identification, as if Stephens has the unilateral capacity and authority to remake himself a "transgender woman who was [mistakenly] '**assigned** male at birth.'" *Id.* at 567 (emphasis added).

B. The Court Below Failed to Exercise Its Judicial Duty of Independent Judgment.

At every point in its decision, the court below presumes that Stephens' "gender" is not like one's sex — predetermined — but changeable at will, and thus not amenable to independent judicial review. First, the court found — without any evidence other than Stephens' say-so — that Stephens is "transgender," and in transitioning status from male to female. *Id.* at 568, 571, 574-75. Second, the court blindly accepted the American Psychiatric Association's most recent characterization of "transgender status" to be a

"'disjunction between an individual's sexual organs and sexual identity.'" *Id.* at 576. Third, the court simply asserted that Stephens' employer had discriminated against Stephens because the employer held "**stereotypical** notions of how sexual organs and gender identity ought to align." *Id.* (emphasis added). Fourth, having relegated the physical sexual anatomy of a human being to the status of alchemy, the court insisted that Stephens' employer must get on board with Stephens' treatment program lest Stephens be trapped in a body that is "**inherently** 'gender non-conforming.'" *Id.* (emphasis added).

The court allowed Stephens to brazenly conscript the Funeral Home to help Stephens "'become the person'" that Stephens wanted to be. The court below deferred to Stephens' therapeutic regimen that would require his employer to change his employment practices, including his dress code, so that Stephens could become "her" own true self. *Id.* at 568-69. Not only that, but Stephens also admitted that his continuing employment for at least one year was only the "'first step'" in his self-devised recovery plan.

Instead of acknowledging this dilemma, the court below equated "sex" and "gender," as if the two were the same. *See id.* at 571. Yet even the "notoriously permissive"[9] *Webster's Third New International Dictionary* (1961) treats "sex" and "gender" as distinctly different realities. Sex is binary, "one of the two divisions of organic esp. human beings respectively

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[9] *See* A. Scalia & B. Garner, Reading Law at 418 (West: 2012).

designated male or female." *Id.* at 945. In contrast, gender is quintessentially a linguistic term "of two or more subclasses ... partly arbitrary, but also partly based on distinguishable characteristics such as shape, social rank, manner of existence ... or sex (as masculine, feminine, neuter) and that determine agreement with and selection of other words or grammatical forms." *Id.* at 944. But the court below was in no mood to wrestle this issue to the ground, instead deferring to the EEOC's view that "sex" included "gender identity." *See* EEOC v. R.G. at 571-73.

III. COURTS SHOULD NOT ASSUME THE POLITICALLY CORRECT, BUT DEMONSTRABLY FALSE, NOTION THAT SEXUAL ORIENTATION IS AN IMMUTABLE CHARACTERISTIC.

Title VII of the 1964 Civil Rights Act proscribes employment related discrimination only with respect to an "individual's race, color, religion, sex, or national origin...." One's race, color, sex, and national origin are clearly immutable characteristics — fixed at birth and out of one's control.[10] Respondent Stephens, who was "biologically male," sought to be able to wear women's clothes to work as part of his "transition from male to female." EEOC v. R.G. at 566. On the other hand, Harris Funeral Home argued in the Sixth

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[10] Certainly "religion" is not immutable, but it presents a separate question, as its protection is deeply rooted in the origins of the country and the constitutional text — the "free exercise" clause of the First Amendment.

Circuit that "sex" is a "biologically immutable trait" that cannot be changed. *Id.* at 576. The Sixth Circuit conveniently determined that it "need not decide that issue" (*id.*), but the immutability issue lurks in the background and thus cannot be ignored. Courts have often explained the policy underlying these employment protection categories in terms of the immutability of the characteristics protected by this statute. For example, the D.C. Circuit observed:

> Congress has said that no exercise of [managerial] responsibility may result in discriminatory deprivation of equal opportunity because of *immutable* race, national origin, color, or sex classification. [Fagan v. National Cash Register Co., 481 F.2d 1115, 1125 (D.C. Cir. 1973).]

While some may question whether immutability is the *sine qua non* of a protectable class, certainly LGBTQ advocates have devoted enormous energy to convince the American people that homosexuality and transgenderism[11] fall in such a category. It has been asserted incessantly that one is "born that way," and that sexual attraction and sexual self-perception are

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[11] The term "transgender" is used here, although it appears to have been designed politically to convey the impression that a male or female can cross over to the other sex. George Orwell once stated: "Political language ... is designed to make lies sound truthful ... and to give an appearance of solidity to pure wind." S. Orwell and I. Angus, eds., The Collected Essays, Journalism and Letters of George Orwell at 139 (NY: Harcourt Brace and World, 1968).

not matters of "choice."[12] Certainly this Court's decision to force the states to recognize same-sex marriages was based on the "born that way" theory that Justice Kennedy twice embraced in Obergefell v. Hodges, 135 S.Ct. 2584 (2015).

> [I]t is the enduring importance of marriage that underlies the petitioners' contentions.... And their **immutable** nature dictates that same-sex marriage is their only real path to this profound commitment. [*Id.* at 2594 (emphasis added).]

> Only in more recent years have psychiatrists and others recognized that **sexual orientation** is both a normal expression of human sexuality and **immutable**.[13] [*Id.* at 2596 (emphasis added).]

The danger of allowing courts to legislate in the guise of re-interpreting statutory language is only

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[12] *See, e.g.,* M. Talbot, "Is Sexuality Immutable?" *The New Yorker* (Jan. 25, 2010) ("But the fact is that the idea of sexual orientation as something inborn—or at least something in which people don't feel they are exercising a conscious choice—is an important part of the package of liberal beliefs about homosexuality that often includes support for marriage.").

[13] Justice Kennedy's second reference to immutability was sourced to the *amicus curiae* brief of the American Psychological Association, although that brief did not use the word "immutable." *See* P. Spigg, "Is Homosexuality 'Immutable?' Justice Kennedy's Shaky Bridge to Redefining Marriage," Family Research Council (Aug. 5, 2015).

compounded when those re-interpretations are based on felt perceptions rather than litigated facts.

Consider the situation of David Arthur, one of the *amici curiae* filing this brief. David Arthur was sexually abused from around the age of five. He was involved in homosexual behavior, and then worked as a transgender prostitute. He contracted HIV/AIDS at age 14, and by age 37 he was on his deathbed. That was in 2009. With his body weakening, in a hospital bed that was placed in his bedroom at home, David Arthur hit rock bottom and turned to God, who rescued him from the captivity of his addictions. Today, he is healthy and strong, and living proof that people are not immutably transgendered or homosexual. On his website,[14] David Arthur summarized the matter as follows:

> Using myself as an illustration, as a former homosexual, and former transgender person, with decades of experience in that world, I can say without a shadow of a doubt that homosexuality (including transgenderism) is absolutely mutable and curable!
>
> God has created each one of us in a heterosexual design which cannot be altered. We are born male or female. Our DNA makes us male or female and no surgery in the world can change our DNA. Changing our sex/gender is not possible. Indeed,

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[14] More of David Arthur's story can be found at "Meet David Arthur" on the website of I Belong Amen Ministries.

> homosexuality is not truly a sexual orientation at all, but just one type of sin, and a type of bondage. Those who tell us that homosexuality is just one of many sexual orientations seek to keep us in bondage, whether they know it or not.
>
> Once we embrace our heterosexual design, we can find the freedom from the bondage of homosexuality. Being set free from homosexuality (including transgenderism) is just as desirable, just as real, and just as common, as a drug addict being set free from the bondage and hold of drugs. Our "true self" is exactly who we were created to be from conception....
>
> There are many people being set free from homosexuality and, in fact, there is a whole movement of ex-homosexuals (ex-trans) that are speaking out and exposing the darkness of the LGBT agenda/movement. You will not hear much about these men and women, as the powers that be do not want their stories distributed. However, I have had contact with many men who at one time identified as female and have been set free from those deceptive lies and now live healthy, productive lives as the men they were created to be. And the same for some women I know who once identified as male.[15]

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[15] David Arthur's exodus from homosexuality and transgenderism is not unique. In 2003, Dr. Robert L. Spitzer published the results

Indeed, the rush to grant special rights to homosexuals has been less about truth or logic, and more about "political correctness." As much of the support for granting such rights has come from the American Psychological Association ("APA") and other similar groups, an analysis of the issue by its past president Dr. Nicholas A. Cummings is instructive.

> We might be hard-pressed to define political correctness. Yet we all recognize it and think and behave accordingly lest we offend or be accused of being insensitive, lacking in compassion, or just plain stupid.... PC is impervious to critical self-examination. [Nicholas A. Cummings & William T. O'Donohue, Eleven Blunders that Cripple Psychotherapy in America (Routledge: 2008) at 187, 189.]

Dr. Cummings traces the politically correct consensus that existed in the 1990s with the belief that climate change would lead to a new "ice age," but now the consensus has moved 180 degrees to fear global warming and the melting of the ice caps. He describes the relentless pressure within the profession to promote a political agenda without scientific support.

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of a study of the notion that homosexual orientation cannot be changed by studying 200 male and female homosexuals with an average age in their mid-forties, many of whom were married, who utilized reparative therapy. The majority of those persons "did not find the homosexual lifestyle to be emotionally satisfying." John F. Harvey, Homosexuality and the Catholic Church at 29 (Ascension Press: 2007).

Dr. Cummings explains that the APA's endorsement of gay marriage was based on "the flimsiest of research evidence," and how those in his profession not in line with the new agenda seek anonymity for fear of retaliation. *See id.* at 211, 213-14.

Observing the transgender juggernaut up close was former Delegate Bob Marshall, who served in the Virginia House of Delegates from 1992 to 2018, only to lose his seat to the first openly transgender person elected to a state legislature in the nation. He views the transgender political movement as having broad potential ramifications for society, using illustrations drawn from our culture, including:

- the routine effort to treat confused minors with sex change hormones and surgery (including castration), which should be considered child abuse;
- the effort to silence reparative therapy to help gender-confused individuals recognize reality, as we do with anorexic persons;
- whether bearded men with deep voices can use the women's restroom at Disneyland;
- whether girls' swim clubs must admit men to their locker rooms;
- whether taxpayers will be required to pay for hormone treatment of 15-year-old boys;
- whether women's sports will be unfairly overrun by men; and
- whether drag queens should read books on changing their sex to three- and four-year-olds. [*See* Robert G. Marshall, Reclaiming the

Republic, Appendix III (TAN Books: Charlotte) (2018).]

Before this Court takes one more step along the line of granting special rights to homosexuals, transvestites, transexuals, and others, it should consider the myriad of other conflicts that it will be bringing to our society, and the damage that it will do to families and individuals.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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