STATE OF MICHIGAN
IN THE SUPREME COURT

On Defendants' Bypass Application for Leave to Appeal

ROUCH WORLD, LLC and
UPROOTED ELECTROLYSIS, LLC,

Plaintiffs,

v

DEPARTMENT OF CIVIL RIGHTS and
DIRECTOR OF DEPARTMENT OF CIVIL
RIGHTS,

Defendants.
_____/

SC No. 162482

COA No. 355868

COC No. 20-000145-MZ

AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, AMERICAN CIVIL LIBERTIES UNION, AFFIRMATIONS LGBTQ+ COMMUNITY CENTER, EQUALITY MICHIGAN, FREEDOM FOR ALL AMERICANS, HUMAN RIGHTS CAMPAIGN, LGBT DETROIT, NATIONAL CENTER FOR LESBIAN RIGHTS, OUT CENTER OF SOUTHWEST MICHIGAN, OUT FRONT KALAMAZOO, RUTH ELLIS CENTER, SOUTHERN POVERTY LAW CENTER, STAND WITH TRANS, AND TRANS SISTAS OF COLOR PROJECT

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INTEREST OF AMICI CURIAE[1]

Amici are legal, advocacy, and social service organizations dedicated to achieving full equality for LGBT people under the law. A brief description of each amicus organization is provided in an appendix to this brief.

Because they work with and in the LGBT community, amici know that discrimination based on sexual orientation—in employment, housing, education, public accommodations, and elsewhere—is a pervasive problem that requires legal solutions. Based on the plain language of the Elliott-Larsen Civil Rights Act (ELCRA) and the United States Supreme Court's recent decision in *Bostock v Clayton County, Georgia*, __ US __; 140 S Ct 1731 (2020), amici urge this Court to hold that the ELCRA's prohibition on discrimination "because of . . . sex" protects people from discrimination based on their sexual orientation.[2]

[1] Pursuant to MCR 7.312(H)(4), amici state that no counsel for a party authored this brief in whole or in part, nor did anyone, other than amici or their counsel, make a monetary contribution intended to fund the preparation or submission of the brief.

[2] Amici agree with the Court of Claims' holding that discrimination based on an individual's gender identity is prohibited under the ELCRA. Plaintiffs did not seek leave to appeal the Court of Claims' order insofar as it granted summary disposition on that question.

QUESTIONS PRESENTED

1. Whether the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq*., prohibits discrimination on the basis of sexual orientation?

   Amici's answer: Yes.

2. Whether *Barbour v Department of Social Services*, 198 Mich App 183; 497 NW2d 216 (1993), should be overruled?

   Amici's answer: Yes.

INTRODUCTION

In *Bostock v Clayton County*, *Georgia*, __ US __; 140 S Ct 1731 (2020), the United States Supreme Court declared that discriminating on the basis of an individual's sexual orientation constitutes discrimination because of sex in violation of Title VII of the federal Civil Rights Act of 1964. But in Michigan, a decades-old precedent from the Michigan Court of Appeals has kept courts from reaching the same conclusion under the Elliott-Larsen Civil Rights Act, which, like Title VII, prohibits discrimination "because of . . . sex." The time has come for this Court to remove that roadblock and hold that discrimination based on sexual orientation is prohibited sex discrimination.

Doing so would not only free Michiganders to invoke state law to protect their equality in the workplace, in places of public accommodation, and elsewhere, but it would accord with sound principles of statutory interpretation. The plain text of the ELCRA prohibits discrimination based on sexual orientation. Discriminating against a person based on their sexual orientation necessarily entails treating them differently than a similarly situated person of a different sex. And that is textbook sex discrimination, plain and simple.

In addition, courts in this state routinely look to federal precedent when determining the scope of the ELCRA. In fact, the very Court of Appeals decision that found the ELCRA did not encompass sexual-orientation discrimination rested that conclusion on federal precedents interpreting Title VII. But those cases are no longer good law. In *Bostock*, the United States Supreme Court found that Title VII prohibited discrimination on the basis of sexual orientation through the same language that is at issue here, regardless whether individual members of the legislature would have necessarily anticipated that result. Recognizing that the ELCRA encompasses discrimination based on sexual orientation would also accord with federal precedent

on unlawful sex stereotyping. There is no reason why the civil rights laws of this state, which this Court has often stated should be liberally construed, should provide more meager protections than their federal counterparts.

For these reasons, this Court should grant leave to appeal and recognize that the ELCRA fully protects lesbian, gay, and bisexual individuals from discrimination based on their sexual orientation. This case is of exceptional public importance, and only this Court can correct the Court of Appeals' past mistake. It should do so now.

ARGUMENT

I. The ELCRA prohibits discriminating against an individual because of their sexual orientation.

A. Discrimination based on sexual orientation is a prohibited form of sex discrimination under the ELCRA.

The Elliott-Larsen Civil Rights Act prohibits various forms of discrimination "because of . . . sex." The ELCRA specifically provides that an employer "shall not . . . fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term or condition, or privilege of employment, because of . . . sex." MCL 37.2202(1)(a). It further forbids an educational institution from "discriminat[ing] against an individual in the full utilization of or benefit from the institution . . . because of . . . sex." MCL 37.2402(a). And it also prohibits a place of public accommodation from "deny[ing] an individual the full and equal enjoyment of the . . . accommodations because of . . . sex." MCL 37.2302(a). This Court has long held that the ELCRA should be construed broadly in order to accomplish the statute's remedial objective of eradicating discrimination. *E.g.*, *Eide v Kelsey-Hayes Co*, 431 Mich 26, 34; 427 NW2d 488 (1988) (invoking "the well-established rule that remedial statutes are to be liberally construed to suppress the evil and advance the remedy" to interpret the Elliott-Larsen Civil Rights Act).

Here, the plain terms of the ELCRA prohibit discrimination based on sexual orientation. An entity that disadvantages a person based on their sexual orientation necessarily discriminates "because of . . . sex." A decision to deny a job, a service, or an educational benefit to an individual on the basis of sexual orientation turns on the individual's sex assigned at birth. Take an employee named Casey. Casey is a man who is attracted to men. If Casey was female and attracted to men, Casey's employer would not have fired him. But because Casey is male and attracted to men, he was fired. Under the plain terms of the statute, the employer has discriminated against Casey

because of Casey's sex. Had Casey been female and not male, Casey would have kept the job. But he's not, and so he lost his job. That is discrimination because of sex.

Unpacking how the ELCRA would apply to an employer that discriminates against employees in interracial marriages underscores the point. An employer would violate the ELCRA's prohibition on discrimination "because of . . . race" if the employer fired employees who were in interracial marriages. Cf. *Loving v Virginia*, 388 US 1, 11; 87 S Ct 1817; 18 L Ed 2d 1010 (1967) (explaining that bans on interracial marriages "rest solely upon distinctions drawn according to race"). That is true even though a "no-interracial-marriages" policy would apply to employees of all races. And it would still be true even if an employer did not know an employee's race before subjecting them to the policy. An employer with a "no-interracial-marriages" policy has still discriminated "because of . . . race" because the policy turns on the race of an employee. If a black employee marries a white person, they would be fired. If the same employee were white, they would not be fired. That is discrimination "because of . . . race." The same is true for an employee with a "no-same-sex-marriages" policy: The policy discriminates "because of . . . sex" because the policy turns on the sex of an employee.

The Court of Appeals' previous decision in *Barbour v Department of Social Services*, 198 Mich App 183; 497 NW2d 216 (1993), reached a contrary conclusion by relying on a now-outdated mode of statutory interpretation and now-overturned case law. The Court of Appeals insisted the "protections are aimed at gender discrimination, not discrimination based on sexual orientation." *Id.* at 185. The court reached that conclusion by summarily citing a number of now-overturned cases interpreting Title VII of the federal Civil Rights Act of 1964. Those cases reasoned that Title VII was "intended to place women on an equal footing with men," and therefore did not reach discrimination based on sexual orientation for that reason. *DeSantis v Pac Tel & Tel Co*, 608 F2d

327, 329 (CA 9, 1979), quoting *Holloway v Arthur Andersen & Co*, 566 F2d 659 (CA 9, 1977). But the question is not whether the legislature had sexual orientation predominantly in mind when it passed the statute. The question is what the statute *did*. And the ELCRA, like Title VII, prohibited discrimination "because of . . . sex." As explained above, that prohibition plainly encompasses decisions that turn on an individual's sexual orientation, which is inextricably linked to sex. Thus, adverse decisions or denials of benefits that depend on an individual's sexual orientation constitute discrimination "because of . . . sex" even though the statute does not use the phrase "sexual orientation" and even though the legislature may not have even considered the question.

B. *Barbour* should be overturned in light of the United States Supreme Court's decision in *Bostock v Clayton County, Georgia*.

When the Court of Appeals decided *Barbour* and concluded that the Elliott-Larsen Civil Rights Act did *not* prohibit discrimination on the basis of sexual orientation, it "looked to the analogous provisions of title VII of the Civil Rights Act" and "considered federal precedent construing . . . title VII." *Barbour*, 198 Mich App at 185; see also *id.* ("A review of federal case law reveals title VII's protections are aimed at gender discrimination, not discrimination based on sexual orientation."). But the decisions that the Court of Appeals relied on were mistaken, and are no longer good law. The United States Supreme Court has now definitively interpreted the federal Civil Rights Act and concluded that it prohibits discrimination based on sexual orientation. That decision provides another reason for this Court to overturn *Barbour*.

1. *Bostock* held that the analogous language in Title VII prohibits discrimination on the basis of sexual orientation.

The United States Supreme Court's recent decision in *Bostock v Clayton County, Georgia*, __ US __; 140 S Ct 1731 (2020), interpreted language functionally identical to that in the ELCRA to prohibit discrimination because of sexual orientation under Title VII of the Civil Rights Act of

1964. (Title VII makes it illegal to "discriminate against any individual . . . because of . . . sex," 42 USC 2000e-2(a)(1).) The United States Supreme Court's interpretation rested on two principles, both of which apply with equal force to the ELCRA.

First, the United States Supreme Court explained that Title VII prohibits discrimination "*because of*" sex, and that this language incorporates a "but-for causation" standard. *Bostock*, 140 S Ct at 1739. Under the "sweeping" but-for causation standard, *Bostock* reasoned, "causation is established whenever a particular outcome would not have happened 'but for' the purported cause." *Id*.

Second, *Bostock* observed that "discriminate" means "treating [an] *individual* worse than others." *Id*. at 1740 (emphasis added). *Bostock* rejected the employer's suggestion that the statute required courts "to consider the employer's treatment of groups rather than individuals"—that is, to consider an employer's treatment of women as a group and then compare that treatment to the employer's treatment of men as a group. *Id. Bostock* explained that the statute foreclosed that mode of analysis because the statute used the word "individual," indicating that the "focus should be on individuals, not groups." *Id.*

From these principles, *Bostock* arrived at the "straightforward rule" that an employer "violates Title VII when it intentionally fires an individual employee based in part on sex." *Id.* at 1741. And, the Court concluded, "[f]or an employer to discriminate against employees for being homosexual . . . the employer must intentionally discriminate against individual men and women in part because of sex." *Id.* at 1743.

The principles from *Bostock* resolve this case. Like Title VII, the ELCRA prohibits discrimination "*because of*" sex. Also like Title VII, the ELCRA incorporates a "but for causation" standard. See, e.g., *Hecht v Nat'l Heritage Academies, Inc*, 499 Mich 586, 606; 886 NW2d 135

(2016) ("[W]e have interpreted the CRA to require 'but for causation.'"). And like Title VII, the ELCRA prohibits discrimination "against an individual," not discrimination "against groups." The language from the ELCRA, like the language from Title VII, results in the straightforward rule that an entity "violates [the ELCRA] when it intentionally [disadvantages] an individual [] based in part on sex." *Bostock*, 140 S Ct at 1741. And "[f]or an [entity] to discriminate against [individuals] for being homosexual . . . the [entity] must intentionally discriminate against individual men and women in part because of sex." *Id.* at 1743.

2. This Court routinely relies on federal interpretations of federal law to guide interpretations of state law, including the ELCRA.

The United States Supreme Court's interpretation of the federal Civil Rights Act provides a reason to revisit *Barbour*. It also supplies powerful evidence about the meaning of the analogous language in the Elliott-Larsen Civil Rights Act. This Court has been "many times guided in [its] interpretation of the Michigan Civil Rights Act by federal court interpretations of its counterpart federal statute." *Chambers Trettco, Inc*, 463 Mich 297, 313; 614 NW2d 910 (2000), citing *Sumner v Goodyear Tire & Rubber Co*, 427 Mich 505, 525; 398 NW2d 368 (1986); *Haynie v Michigan*, 468 Mich 302, 325; 664 NW2d 129 (2003) ("Because Michigan's employment-discrimination statute so closely mirrors federal law, [this Court] often rel[ies] on federal precedent for guidance."); *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 133; 666 NW2d 186 (2003) (incorporating federal case law on federal Civil Rights Act for "cases involving indirect or circumstantial evidence" of discrimination); *Town v Michigan Bell Tel Co*, 455 Mich 688, 695; 568 NW2d 64 (1997) (noting that Michigan courts use the United States Supreme Court's *McConnell Douglas* test for establishing a prima facie case of discrimination); *Harrison v Olde Fin Corp*, 225 Mich App 601, 612; 572 NW2d 679 (1997) (incorporating United States Supreme Court decision on sex stereotyping and mixed motive claims); *Northville Pub Schs v Civil Rights*

Comm, 118 Mich App 573, 576; 325 NW2d 497 (1982) ("Federal courts have had a much greater opportunity to review questions concerning discrimination in employment than have state courts. Consequently, federal precedent dealing with such questions is often highly persuasive."); *Smith v Consolidated Rail Corp*, 168 Mich App 773, 776-777; 425 NW2d 220 (1988) (relying on the United States Supreme Court's disparate impact precedent to interpret the Elliott-Larsen Civil Rights Act).

While this Court has occasionally declined to adopt federal interpretations of the federal Civil Rights Act when construing the ELCRA, it usually does so when federal decisions interpret the federal statute "on the basis of the 'policy' and 'object' of Title VII rather than what the statute actually says." *Elezovic v Ford Motor Co*, 472 Mich 408, 421; 697 NW2d 851 (2005). That caveat makes sense because "the policy behind a statute cannot prevail over what the text actually says." *Id.* at 421-422. But *Bostock* made clear that its holding rests on the text of Title VII and not on the policy animating the statute, stating that, "[a]t bottom, these cases involve no more than the straightforward application of legal terms with plain and settled meanings." *Bostock*, 140 S Ct at 1743. "For an employer to discriminate against employees for being homosexual … [is] prohibited by Title VII's plain terms–and that 'should be the end of the analysis.'" *Id.*, quoting *Zarda v Altitude Express, Inc*, 883 F3d 100, 135 (CA 2, 2018) (Cabranes, J., concurring in the judgment).

Several other courts have already relied on the United States Supreme Court's decision in *Bostock* to construe related provisions of state or local law. See *Lucas v United States*, 240 A3d 328, 338-339 (DC, 2020) (relying on *Bostock* to interpret District of Columbia statute); *ME v TJ*, __ SE2d __; 2020 WL 7906672, at *7-8 (NC App, 2020) (Docket No. COA18-1045) (relying on *Bostock* to interpret provision in the North Carolina constitution); *NH v Anoka-Hennepin Sch Dist No 11*, 950 NW2d 553, 558, 570 (Minn App, 2020) (relying on *Bostock* to interpret Minnesota

Constitution); *McGuire v Newark*, 2020-Ohio-4226, ¶¶ 56-57; 2020 WL 5056993 (Ohio App, 2020) (relying on *Bostock* to interpret Ohio statute); *Nance v Lima Auto Mall, Inc*, 2020-Ohio-3419, ¶ 113; 2020 WL 3412268 (Ohio App, 2020) (same); *Jarrell v Hardy Cellular Tel Co*, 2020 WL 4208533, at *2 (SD W Va, 2020) (Docket No. 20-cv-00289) (applying *Bostock* to allow claim for sexual orientation discrimination under West Virginia ban on sex discrimination in employment). Other courts have relied on *Bostock* for general principles of statutory interpretation of state law. *Pacas v Texas*, 612 SW3d 588, 597 (Tex App, 2020); *Williams v Florida*, __ So3d __; 2020 WL 6936066, at *4 (Fla App, 2020) (Docket No. 1D19-498).

This Court has looked to federal precedents interpreting analogous federal statutes in areas not involving the ELCRA as well. *Gibraltar Sch Dist v Gibraltar MESPA-Transp*, 443 Mich 326, 335; 505 NW2d 214 (1993) (interpreting Michigan's public employment relations act by considering the federal National Labor Relations Act); *State Employees Ass'n v Dep't of Mgmt & Budget*, 428 Mich 104, 117; 404 NW2d 606 (1987) (interpreting Michigan's FOIA by considering interpretations of federal FOIA). Just last year, this Court relied on federal precedent on the scope of federal constitutional provisions to interpret the scope of Michigan's independently worded constitutional provisions regarding the separation of powers. *In re Certified Questions*, __ Mich __; __ NW2d __; 2020 WL 5877599, at *13 (2020) (Docket No. 161492). See also *Blank v Dep't of Corrs*, 462 Mich 103, 113-115; 611 NW2d 530 (2000) (relying on the United States Supreme Court's decision in *INS v Chadha*, 462 US 919; 103 S Ct 2764; 77 L Ed 2d 317 (1983), to construe the Michigan Constitution). It should do the same with *Bostock* here.

C. Discriminating against an individual because of sexual orientation also constitutes discrimination because of sex because it embodies sex stereotyping.

Discrimination on the basis of sexual orientation amounts to discrimination because of sex for a second reason: It embodies forbidden, sex-based stereotypes about how different sexes should

behave. This Court should confirm that sex stereotyping in this case amounts to impermissible discrimination because of sex under the ELCRA.

In *Price Waterhouse v Hopkins*, 490 US 228; 109 S Ct 1775; 104 L Ed 2d 268 (1989), the United States Supreme Court concluded that employment decisions made on the basis of sex stereotypes amount to discrimination because of sex under the federal Civil Rights Act. In that case, Ann Hopkins' employer declined to promote her to partner because she was too "macho" and needed to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." *Id.* at 235. Her employer's actions constituted discrimination "because of … sex," the Court explained, because they "were motivated by stereotypical notions about women's proper deportment." *Id.* at 256 (plurality opinion); see also *id.* at 272 (O'Connor, J., concurring) (concluding that the employer had "permit[ed] stereotypical attitudes toward women to play a significant role" in its employment decision). The United States Supreme Court reasoned: "[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group." *Id.* at 251 (plurality opinion).

This Court and the Court of Appeals have previously relied on *Price Waterhouse v Hopkins* to interpret the scope of the Elliott-Larsen Civil Rights Act. See, e.g., *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 133; 666 NW2d 186 (2003); *Harrison v Olde Fin Corp*, 225 Mich App 601, 612; 572 NW2d 679 (1997). The ELCRA is also specifically "aimed at 'the prejudices and biases' borne against persons because of their membership in a certain claim and seeks to eliminate the effects of offensive or demeaning stereotypes or biases." *Miller v CA Muer Corp*, 420 Mich 355, 363; 362 NW2d 650 (1984).

The text of the ELCRA also forbids discrimination based on sex-based stereotypes. An adverse decision or denial of benefits that rests on a sex-based stereotype constitutes discrimination because of sex because it penalizes an individual for failing to conform to a belief about how persons of a particular sex should behave. And a decision that turns on a generalization about how an individual of a particular sex should behave necessarily depends on the individual's sex. An employer that permits men to have short hair but discriminates against a woman with short hair has treated that employee worse because of her sex.

Discrimination against lesbian, gay, and bisexual individuals similarly rests on sex-based stereotypes. Discriminating against a man who is married to a man punishes him for failing to conform to a sex-based expectation that a woman is the only proper romantic partner for a man. That is the kind of stereotype that the ELCRA prohibits. "Stereotypical notions about how men and women should behave will often necessarily blur into ideas about heterosexuality and homosexuality." *Dawson v Bumble & Bumble*, 398 F3d 211, 218 (CA 2, 2005), quoting *Howell v N Cent Coll*, 320 F Supp 2d 717, 723 (ND Ill, 2004).

Any attempt to disentangle forbidden sex-based stereotyping from discrimination based on sexual orientation would be unworkable. Consider some of the federal court precedents on sex stereotyping claims. In *Prowel v Wise Business Forms, Inc*, 579 F3d 285, 287 (CA 3, 2009), the court ruled that the plaintiff must be permitted to proceed on his federal civil rights claim that he was harassed and ultimately fired from his job because he failed to conform to sex stereotypes at his workplace. He said he "had a high voice and did not curse; was very well-groomed;" and "talked about things like art, music, interior design, and décor." *Id.* at 291-292. The plaintiff was also gay, and he alleged that some of his coworkers called him "princess" and "Rosebud" and put a pink tiara at his workstation. *Id.* at 287, 291. Given such facts, the court ruled, it would be a

fool's errand to attempt to divine whether plaintiff's harassment was due to "sex stereotyping" or discrimination based on sexual orientation. The two are fundamentally interconnected.

Nor does *Prowel* represent an unusual fact pattern. In *Rene v MGM Grand Hotel, Inc*, 305 F3d 1061, 1064 (CA 9, 2002), an openly gay man argued that he was subjected to a hostile work environment on "almost a daily basis." The federal court of appeals rejected the idea that Rene's "otherwise viable cause of action [could be] defeated" if "he was targeted because he [was] gay." *Id.* at 1066; see also, e.g., *Evans v Georgia Reg'l Hosp*, 850 F3d 1248, 1254-1255 (CA 11, 2017) (allowing an employee to amend the complaint which stated she was fired for being a lesbian as a "gender nonconformity claim"). There too, the harassment Rene suffered due to sex-stereotyping was inherently bound up with harassment related to sexual orientation.

II. This Court should grant leave to decide this issue now and bypass the Court of Appeals.

This Court should decide whether the ELCRA prohibits discrimination on the basis of sexual orientation now, and it should bypass the Michigan Court of Appeals for two reasons.

First, the question presented in this case, whether the ELCRA prohibits discrimination on the basis of sexual orientation, involves an "issue [that] has significant public interest," MCR 7.305(B)(2), and "a legal principle of major significance to the state's jurisprudence," MCR 7.305(B)(3), because discrimination on the basis of sexual orientation remains a pressing problem in Michigan. Since the Michigan Civil Rights Commission issued its interpretive statement that the ELCRA prohibits discrimination against LGBT people, the Michigan Department of Civil Rights reports that it has received and investigated 63 complaints of such discrimination, of which 44 involve sexual orientation discrimination in employment, housing, and public

accommodations.[3] Similarly, amicus ACLU of Michigan, through its LGBT Project, reports having received 113 complaints of LGBT discrimination during the period of April 2009 through January 2019, of which 60 were complaints regarding sexual orientation discrimination in employment, housing, education and public accommodations.[4] Likewise, amicus Equality Michigan's Victim Services Program, which provides survivor support services to LGBT people who have experienced violence, discrimination and harassment due to their sexual orientation and or gender identity, reports having received more than 350 complaints of such incidents from 2013 through 2016.[5] And academic research by the UCLA School of Law's Williams Institute has reported the following findings:

- Of Michigan residents who identify as LGBT, 55% report experiencing discrimination or harassment based on their sexual orientation.[6]
- Surveys show that lesbian, gay and bisexual students in Michigan are more likely to report being bullied at school or electronically than heterosexual students.[7]
- Sixty percent of Michigan residents think that gay and lesbian people experience a lot of discrimination in the United States, and 80% think that LGBT people experience discrimination in Michigan.[8]

[3] Communications on file with amici.

[4] *Id*.

[5] *Id*.

[6] Mallory et al., *The Impact and Stigma of Discrimination Against LGBT People in Michigan* (UCLA School of Law Williams Institute, 2019) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-LGBT-Discrimination-MI-Apr-2019.pdf>, p 28.

[7] *Id.*, p 34.

[8] *Id.*, p 28.

Second, this Court's intervention is necessary to correct the error in *Barbour*. The Court of Claims relied on the Court of Appeals decision in *Barbour*, and the defendants and amici are now asking this Court to overturn that Court of Appeals decision. Because only this Court can correct a precedential decision of the Court of Appeals, this Court should grant the application to bypass the Court of Appeals.

CONCLUSION

Defendants' application for leave to appeal should be granted, and the order of the Court of Claims insofar as it denied Defendants' motion for summary disposition should be reversed.

Respectfully submitted,

By: /s/ Daniel S. Korobkin

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APPENDIX

AMICI CURIAE

The **American Civil Liberties Union of Michigan** is the Michigan affiliate of the **American Civil Liberties Union**, a nationwide, non-profit, nonpartisan organization with 1.5 million members dedicated to the principles of liberty and equality embodied in the Constitution and this Nation's civil rights laws. Through its national and Michigan LGBT Projects, the ACLU works in courts, legislatures, and communities to protect the rights of lesbian, gay, bisexual, and transgender individuals from discrimination.

Affirmations LGBTQ+ Community Center was founded in 1989 with a mission to provide a welcoming space where people of all sexual orientations, gender identities and expressions, and cultures can find support and unconditional acceptance, and where they can learn, grow, socialize and feel safe. Providing support groups, educational and social activities, as well as food assistance, Affirmations serves LGBT individuals throughout metropolitan Detroit, some who have been subject to discrimination due to their sexual orientation and or gender identity.

Equality Michigan is Michigan's statewide LGBTQ political advocacy organization. Formerly known as the Triangle Foundation, Equality Michigan has been Michigan's anti-violence political advocacy organization for more than 25 years. Equality Michigan's Victim Services Program provides dedicated survivor services to LGBTQ persons who have experienced discrimination, violence, and harassment.

Freedom for All Americans is the bipartisan campaign to secure full nondiscrimination protections for LGBTQ people nationwide. It is a nonprofit organization that brings together Republicans and Democrats, businesses large and small, people of faith, and allies from all walks

of life to make the case for comprehensive nondiscrimination protections that ensure everyone is treated fairly and equally.

The **Human Rights Campaign** (HRC) is a non-profit civil rights organization with more than three million members dedicated to ending discrimination against lesbian, gay, bisexual, transgender and queer people and realizing a world that achieves fundamental fairness and equality for all. HRC envisions a world where LGBTQ people are ensured equality and embraced as full members of society at home, at work, and in every community. Among other things, HRC advocates for policies, regulatory changes and legislation that guarantee the legal equality of LGBTQ people.

LGBT Detroit has been providing a safe, brave space focusing on Black LGBT+ issues and supporting LGBT+ culture through education and advocacy for more than two decades. Among its programs are a mentorship/leadership academy, various support groups, and educational workshops and forums. LGBT Detroit hosts the annual Hotter Than July, the oldest Black LGBT+ Pride, which includes social, educational, and entertainment events.

The **National Center for Lesbian Rights** is a national organization committed to protecting and advancing the rights of lesbian, gay, bisexual, and transgender people through impact litigation, public policy advocacy, public education, direct legal services, and collaboration with other civil rights organizations and activists.

The **Out Center of Southwest Michigan**, located in Benton Harbor, provides support services and resources to LGBTQ people, their families, and allies. The Center works to create change in Southwest Michigan through initiatives based on education and strategic partnerships, including establishing the first LGBTQ-inclusive local human rights ordinance in the tri-county

area, as well as working with school communities to create safe and supportive learning environments for LGBTQ students.

Out Front Kalamazoo is the community center for LGBT people in the Kalamazoo area, providing a safe and welcoming environment, with a wide range of educational programs and supportive services. For over 30 years the organization has worked to advance social justice, build coalitions, and change hearts and minds so that LGBT people can live authentically and free from discrimination.

The **Ruth Ellis Center**, founded in 1999, provides trauma-informed services for LGBTQ youth and young adults, with an emphasis on young people of color, experiencing homelessness, involved in the child welfare and juvenile justice system, and/or experiencing barriers to health and well-being. Ruth Ellis operates a Health and Wellness Center that provides integrated medical and behavioral health services, a Drop In Center, Kofi House—a center for lesbian and queer women and girls—and will be soon opening a supportive housing program for homeless and at-risk LGBTQ youth.

Southern Poverty Law Center (SPLC) is a nonprofit civil rights organization working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. Since its founding in 1971, the SPLC has won numerous landmark legal victories on behalf of society's most vulnerable members, including LGBTQ people and their families. SPLC has represented LGBTQ people in civil rights case under federal and state law throughout the United States.

Stand With Trans's mission is to provide tools needed by transgender youth so that they will be empowered, supported, and validated as they transition to their authentic lives. Since 2015 Stand With Trans has been dedicated to developing life-saving programs, educational events, and

support groups for transgender youth and their families throughout Michigan and across the country, with the vision of erasing the stigma surrounding trans identities.

Trans Sistas of Color Project is designed to uplift, influence, and improve the lives and well-being of transgender women of color in metro Detroit. The Project provides care packages, including food and financial assistance to transgender women, many who have experienced discrimination, violence, and harassment due to their race, gender identity, and sexual orientation.