No. 23-1781

In the United States Court of Appeals for the Sixth Circuit

SACRED HEART OF JESUS PARISH, GRAND RAPIDS, GRAND RAPIDS; JERRY HATLEY; ROBIN HATLEY; JOSEPH BOUTELL; RENEE BOUTELL; PETER UGOLINI; KATIE UGOLINI*, et al.,*

Plaintiffs-Appellants,

v.

DANA NESSEL, in her official capacity as Attorney General of Michigan; JOHN E. JOHNSON, JR., in his official capacity as Executive Director of the Michigan Department of Civil Rights; *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Michigan, No. 1:22-cv-00787

BRIEF *AMICI CURIAE* OF BILLY GRAHAM EVANGELISTIC ASSOCIATION, SAMARITAN'S PURSE, CONCERNED WOMEN FOR AMERICA, THE FAMILY FOUNDATION, ILLINOIS FAMILY INSTITUTE, INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS, PACIFIC JUSTICE INSTITUTE, and THE NATIONAL LEGAL FOUNDATION
in support of Plaintiffs-Appellants and supporting reversal

Steven W. Fitschen
Counsel of Record
National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 650-9210
sfitschen@nationallegalfoundation.org

CORPORATE DISCLOSURE STATEMENT

None of the *Amici Curiae* have issued shares to the public, and none have a parent company, subsidiary, or affiliate that has issued shares to the public. Thus, no publicly held company can own more than 10% of stock of any *Amicus Curiae*.

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STATEMENTS OF INTEREST[1]

The **Billy Graham Evangelistic Association** (BGEA) was founded by Billy Graham in 1950 and, continuing the lifelong work of Billy Graham, exists to support and extend the evangelistic calling and ministry of Franklin Graham by proclaiming the Gospel of the Lord Jesus Christ to all we can by every effective means available to us and by equipping the church and others to do the same. BGEA ministers to people around the world through a variety of activities including God Loves You Tour events, evangelistic festivals and celebrations, television and internet evangelism, the Billy Graham Rapid Response Team, the Billy Graham Training Center at the Cove, the Billy Graham Library, and the Billy Graham Archive & Research Center. Through its various ministries and in partnership with others, BGEA intends to represent Jesus Christ in the public square; to cultivate prayer, and to proclaim the Gospel. BGEA believes its mission to be primarily a spiritual endeavor and further believes that, to fulfill its mission, its employees must share its religious beliefs and acknowledge that those beliefs

[1] No counsel for any party authored this brief in whole or in part. No person or entity other than *Amici* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Appellant has consented to the filing of this Brief. Appellees have not, and a Motion for Leave to File the Brief accompanies it. However, Appellees have stated that they will not oppose the Motion.

are put into action through their employment with BGEA in pursuit of its religious mission and objectives.

Samaritan's Purse is a nondenominational, evangelical Christian organization formed in 1970 to provide spiritual and physical aid to hurting people around the world. The organization seeks to follow the command of Jesus to "go and do likewise" in response to the story of the Samaritan who helped a hurting stranger. Samaritan's Purse operates in over 100 countries providing emergency relief, community development, vocational programs and resources for children, all in the name of Jesus Christ. Samaritan's Purse's concern arises when government hostility prevents persons of faith from practicing core aspects of faith such as prayer, discipleship, evangelism, acts of charity for those in need, or other day-to-day activities of those practicing their sincerely held religious beliefs.

Concerned Women for America (CWA) is the largest public policy organization for women in the United States, with approximately half a million supporters from all 50 States. Through its grassroots organization, CWA encourages policies that strengthen women and families and advocates for the traditional virtues that are central to America's cultural health and welfare, including religious liberties. CWA actively promotes legislation, education, and policymaking consistent with its philosophy. Its members are people whose voices

are often overlooked — everyday American women whose views are not represented by the powerful elite.

The Family Foundation (TFF) is a Virginia non-partisan, non-profit organization committed to promoting strong family values and defending the sanctity of human life in Virginia through its citizen advocacy and education. TFF serves as the largest pro-family advocacy organization in Virginia. Its interest in this case is derived directly from its concern to preserve religious freedom for all.

The **Illinois Family Institute** (IFI) is a nonprofit educational and lobbying organization based in Tinley Park, Illinois, that exists to advance life, faith, family, and religious freedom in public policy and culture from a Christian worldview. A core value of IFI is to uphold religious freedom and conscience rights for all individuals and organizations.

The **International Conference of Evangelical Chaplain Endorsers** (ICECE) has as its main function to endorse chaplains to the military and other organizations requiring chaplains that do not have a denominational structure to do so, avoiding the entanglement with religion that the government would otherwise have if it determined chaplain endorsements. ICECE safeguards religious liberty for all.

The **Pacific Justice Institute** (PJI) is a non-profit legal organization established under section 501(c)(3) of the Internal Revenue Code. Since its

founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment rights. As such, PJI has a strong interest in the development of the law in this area.

The **National Legal Foundation** (NLF) is a public interest law firm dedicated to the defense of First Amendment liberties and the restoration of the moral and religious foundation on which America was built. The NLF and its donors and supporters, including those in Michigan, seek to ensure that an historically accurate understanding of the Religion Clauses is presented to our country's judiciary. Those Clauses are at the heart of the instant case.

SUMMARY OF THE ARGUMENT

The Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), established that religious institutions have a constitutional right to hire and retain only those employees who share their core religious beliefs. This doctrine, founded on church autonomy principles, is known as the "ministerial exception" and has been directly applied by the Supreme Court to religious schools.

Sacred Heart Academy ("Sacred Heart") is a Catholic school operating in Grand Rapids, Michigan. The district court improperly dismissed this case on

standing grounds, denying Sacred Heart's request for injunctive relief despite the very real risk that Michigan's recently revised civil rights laws will be used against it to challenge its hiring decisions that it bases on its religious principles. After briefly addressing the court's misapplication of standing law, your *Amici* will show that a straightforward application of *Hosanna-Tabor* and *Our Lady of Guadalupe* requires injunctive relief for Sacred Heart.

ARGUMENT

I. The District Court Underestimated the Likelihood of an Enforcement Action Against Sacred Heart

The district court's application of standing law ignores the most relevant precedent and comes to the wrong conclusion. The Supreme Court has instructed,

> [w]hen the suit is one challenging the legality of government action or inaction, standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 561-62 (1992). That is exactly the situation in which Sacred Heart finds itself.

Michigan recently amended its civil rights laws to add gender identity and sexual orientation, targeting employers who discriminate on that basis.[2] That Christian organizations do so (in the word's neutral, denotative sense) is no

[2] *See* discussion *infra* at 18-19.

surprise. As Sacred Heart has explained, when the Michigan legislature added those categories, it expressly declined to add an exception for religious institutions, as the legislators recognized that it was those institutions who would likely run afoul of the provisions. App. in Supp. of Pls.' Opp'n to Mot. to Dismiss, R.29-4, Page ID # 694. Thus, Sacred Heart is a targeted organization, and obviously so.

When a plaintiff is the target of the government action, it is not enough to say, as the district court below basically did, that an enforcement action might *not* be brought against the plaintiff. It is sufficient that it *might*. *See, e.g.*, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718 (2007) (finding standing when a policy "may be" applied in the future to plaintiff). A credible threat of future enforcement is sufficient so long as the threat is not "imaginary or wholly speculative," *Babbitt v. Farm Workers Nat'l Union,* 442 U.S. 289, 302 (1979), "chimerical," *Steffel v. Thompson,* 415 U.S. 452, 459 (1974), "wholly conjectural," *Golden v. Zwickler*, 394 U.S. 103, 109 (1969), or relying on "a highly attenuated chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2014). The Supreme Court has further explained that the most obvious way to demonstrate a credible threat of enforcement in the future is an enforcement action in the past. *See Susan B. Anthony List v. Driehaus,* 573 U.S. 149, 164 (2014); *O'Shea v. Littleton,* 414 U.S. 488, 496 (1974)). And the threat of

government use of a challenged statute or policy is especially credible when defendants have not "disavowed enforcement." *Driehaus*, 573 U.S. at 165-66.

While a chain of assumed events may become too attenuated, *all* forward-looking, injunctive cases, by definition, involve some chain of possibilities ending in the challenged provision "may be" applied against the plaintiff. For example, in *Babbitt*, the Supreme Court found standing by assuming that the plaintiff would (a) engage in publicity and (b) inadvertently state an untruth (c) that would be apprehended as such by state authorities (d) who would bring charges (even though they had never done so before). 442 U.S. at 301-02. The Court found the plaintiffs in that situation were "not without some reason" to fear application of the challenged statute, such that the positions of the parties [we]re sufficiently adverse . . . to present a case or controversy . . . ." *Id.* at 302. "The difference between an abstract question and a 'case or controversy' is one of degree." *Id*. at 297-98; *see also Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941).

The district court also relied on the facts that, in the past, plaintiffs challenging the application of Michigan's civil rights laws on free exercise grounds had pursued their constitutional rights in court and that the Michigan authorities concede—how could they not?—that the First Amendment conditions application of its civil rights laws. This actually *disproves* that Sacred Heart lacks standing to complain now. First, the Michigan authorities have not conceded that they agree

with Sacred Heart's application of the ministerial exception to its employees and, as will be discussed below, there is substantial reason to believe that they will not. Second, private individuals may bring actions under those same laws, thereby increasing the likelihood of attempted enforcement against Sacred Heart close to a certainty. *See* Mich. Comp. Laws § 37.2801. And, third, the fact that others have had to litigate their religious rights when facing a civil rights employment complaint under Michigan's laws demonstrates, not that its free exercise rights will never be challenged, but that the enforcement threat to Sacred Heart is very real. *See Driehaus*, 573 U.S. at 165-66; *see also 303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023) (litigating application of Colorado's civil rights laws in a similar context).

The analysis of the likelihood of an enforcement proceeding against Sacred Heart also cannot properly ignore the current political context. Sacred Heart, being true to its religious beliefs, openly restricts its employment on religious grounds, discriminating against non-Christians and sexually active LGBTQ individuals. Its personnel refuse to use a student's preferred pronouns when they differ from the patient's God-given sex. To some, including those at the highest levels in the state, this conduct smacks of bigotry.

The Michigan Civil Rights Commission consists of eight members appointed by the governor, only four of whom may be from the same political

party. At the present time, there are four Democratic members, three Independents, and only one Republican. https://www.michigan.gov/mdcr/commission/meet. Democratic Governor Whitmer appointed all three Independents.

The Michigan Attorney General represents the Michigan Department of Civil Rights and the Michigan Civil Rights Commission. Mich. Comp. Laws § 37.2602. The Attorney General, either solely or in conjunction with the commission and/or department, has the discretion to file suit for alleged violations of the civil rights laws. Presently, the Attorney General is Dana Nessell, whose Wikipedia page (https://en.wikipedia.org/wiki/Dana_Nessel) contains the following information:

- Ms. Nessell is the first openly LGBT person elected to statewide office in Michigan;
- she met her wife, Alanna Maguire, while they were working on the legal case of *DeBoer v. Snyder,* which legalized same-sex marriage;
- in 2016, she founded Fair Michigan, an organization that works to prosecute hate crimes against the LGBT community;

Further, after Ms. Nessell became Attorney General, she withdrew the state from eight amicus briefs joined by her predecessor, including three briefs supporting religious rights and one brief that supported a Missouri employer charged with discrimination in failing to hire a homosexual man;

https://www.detroitnews.com/story/news/local/michigan/2019/01/31/nessel-nixes-state-involvement-8-federal-lawsuits/2735691002/.

Shortly after taking office, Ms. Nessell changed state policy to require the termination of state contracts with those adoption agencies that refuse to work directly with LGBT couples (the previous policy adopted in 2015 allowed religious agencies to refer LGBT couples to other adoption agencies). A Catholic adoption agency and adoptive parents filed suit, and then moved for a preliminary injunction. In granting the injunction, U.S. District Judge Robert Jonker found the following evidence persuasive:

> Based on the record to date, Defendant Nessel is at the very heart of the case. She referred to proponents of the 2015 law [that protected religious adoption agencies] as "hate-mongers" and said the only purpose of the 2015 law was "discriminatory animus." She described the 2015 law as "indefensible" during her campaign. These statements raise a strong inference of a hostility toward a religious viewpoint. Based on the present record, she was also a pivotal player in the State's total reversal of position in the *Dumont* litigation. It was her assessment of risk that led the State to move from defending St. Vincent's position to abandoning it in the first month of her term – and this despite the 2015 law, the language of the contracts, and well-established practice. All of this supports a strong inference that St. Vincent was targeted based on its religious belief, and that it was Defendant Nessel who targeted it.

Buck v. Gordon, 429 F. Supp. 3d 447, 467 (W.D. Mich. 2019).

With an investigative commission with seven of eight members appointed by a Democratic governor, with an attorney general with values diametrically opposed to those of Sacred Heart and with a proven record of

litigation in near-identical circumstances, and with a legislature that refused to provide any express exemption for religious organizations when it expanded its civil rights act to include prohibitions against sexual orientation and gender identity discrimination, Sacred Heart faces a substantial threat of enforcement because of its religious practices.[3]

The Eighth and Fifth Circuits have recently resolved similar cases properly and in tension with the court below. In *Religious Sisters of Mercy v. Bacerra*, 55 F.4th 583 (8th Cir. 2022), and *Franciscan Alliance, Inc. v. Bacerra*, 47 F.4th 368 (5th Cir. 2022), the U.S. Department of Justice argued that doctors did not have standing to seek injunctive relief concerning recently issued federal regulations because the agency had not yet decided whether the regulations would apply if doctors, due to their religious beliefs, refused to provide certain services to transgender youth. Both circuit courts held that, by virtue of the Department of Justice saying the issue was not yet decided, it conceded a credible threat of enforcement. *Religious Sisters*, 55 F.4th at 602-06; *Franciscan Alliance*, 47 F.4th

[3] Indeed, considering the well-publicized travails of Masterpiece Cakeshop, which the Colorado Civil Rights Commission continues to pursue for violating the sexual orientation and sexual identity prohibitions in its public accommodations laws following its rebuff by the United States Supreme Court in *Masterpiece Cakeshop Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018), the district court's conclusion that Sacred Heart does not have a substantial risk of the attempted enforcement of the SOGI provisions of the revised Michigan civil rights act seems more than a little naive. *See Scardina v. Masterpiece Cakeshop Ltd.*, 2023 COA 8 (Colo. Ct. App. 2023) (rejecting first amendment defenses of the cakeshop).

at 376. That the agency had enforced the regulation against similarly situated doctors also showed the harm was sufficiently imminent. *Religious Sisters,* 55 F.4th at 606.

Sacred Heart is an employer targeted by Michigan adding the categories of "gender identity" and "sexual orientation" to its civil rights laws. The threat of enforcement against it is real and imminent. It has standing to complain to prevent the threatened harm from occurring.

II. The Religion Clauses Prohibit Governmental Personnel from Interfering with a Religious School's Good-Faith Determination of Which Employees Must Conform to the Organization's Religious Beliefs and Practices for Carrying Out Its Ministry Purposes

All manner of religious organizations exist in America. Some are traditional churches, synagogues, and mosques with formal worship services and a strict hierarchy. Others operate independently with little formal structure or supervision. Still others operate medical or food service missions, schools, or missionary ministries. *Amici* represent many of these different types of organizations. All of these diverse organizations operate their missions through people. Many religious organizations, including *Amici*, have a good-faith, sincere belief that the best way for them to fulfill their mission is to associate with employees who are faithful, both in belief and conduct, to the organization's doctrines and purposes.

In *Hosanna-Tabor*, the Court found that the Religion Clauses protected a Lutheran school from claims of discrimination when it terminated its school teacher. 565 U.S. at 192. While the Court outlined multiple factors that supported its decision, it fundamentally held that "imposing an unwanted minister" on a religious organization would violate both the Free Exercise Clause, which guarantees to a religious group the "right to shape its own faith and mission," and the Establishment Clause, which "prohibits government involvement in such ecclesiastical decisions." *Id.* at 188-89.

In *Our Lady of Guadalupe*, the Supreme Court once again considered the application of the ministerial exception in a religious school setting. The Court emphasized that the organization bestowing the title of "minister" on its employee was not critical for application of the ministerial exception. Instead, the Court explained that "[w]hat matters, at bottom, is what an employee does." 140 S. Ct. at 2064. In making this determination, the Court stated the importance of a religious institution's determination of the role each employee played in the life of the institution:

> [T]he schools' definition and explanation of their roles is important. In a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition. A religious institution's explanation of the role of such employees in the life of the religion in question is important.

Id. at 2066. This importance precludes second-guessing the organization's judgment that an employee needed to, but did not, adhere to the faith and practice requirements of the religious group, as this "would risk judicial entanglement in religious issues." *Id.* at 2069.

Such deference is consistent with the Court's historic religious freedom jurisprudence's focus on church autonomy. In *Watson v. Jones*, 80 U.S 679 (1871), *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), and *Serbian Orthodox Diocese vs. Milivojevich*, 426 U.S. 696 (1976), the Court consistently and strongly affirmed that religious groups have the right to determine their own rules and mission without oversight by secular authorities. The Court made these determinations in the context of some of the most contentious issues of the day. In *Watson*, this Court deferred to religious authorities in a case originating out of a slavery dispute that spanned the Civil War. Despite the compelling state interest in eliminating slavery, the Court deferred to religious authorities, noting that the church is the exclusive judge of religious issues within its own jurisdiction and that the decision of a religious authority on such questions is binding on the secular courts. 80 U.S. at 728-36. In *Kedroff*, the Court faced a dispute between American and avowedly pro-communist Soviet churches during the height of the Cold War. The Court ruled in favor of the pro-Soviet church, explaining that the New York legislature's decision to favor the American church improperly "intrude[d] for the

benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." 344 U.S. at 119.

Justice Thomas captured well the Court's historic approach to such church-state issues in his concurrences in *Hosanna-Tabor* and *Our Lady of Guadalupe.* In those opinions, he stated that the "Religion Clauses require civil courts to defer to religious organizations' good-faith claims that a certain employee's position is ministerial." *Our Lady of Guadalupe*, 140 S. Ct. at 2069-70 (Thomas, J., concurring); *see also Hosanna-Tabor*, 565 U.S. at 196 (Thomas, J., concurring). Justice Thomas, therefore, rightly limited his inquiry to whether the religious groups asserted in good faith that the worker needed to believe and exercise the faith consistently with that espoused by the organization in order for it to carry out its religious mission to the best of its ability.

III. Sacred Heart's Religion-Infused Mission, Hiring Practices, and Ways of Working Across the Breadth of Its Workforce Demand Application of the Ministerial Exception

As the Court made clear in *Hosanna-Tabor* and *Our Lady of Guadalupe*, religious schools qualify for the ministerial exception. In *Hosanna-Tabor*, the Court found that the Religion Clauses protected a Lutheran school from claims of discrimination when it terminated a teacher. 565 U.S. at 192. *Our Lady of Guadalupe* involved, like here, a Catholic school. Sacred Heart Academy is a

religious school founded on religious principles that permeate every aspect of its operation. Its mission is "restore all things in Christ." Compl., R. 1, Page ID # 5 (¶ 23). While it is open to all families, it provides an explicitly Christ-centered education based on the Word of God (i.e., the Holy Scriptures) and teachings of the Catholic Church. Compl., R. 1, Page ID # 6-7 (¶¶ 28, 41). The Sacred Heart curriculum is filled with explicit religious instruction, including mandatory theology classes. Compl., R. 1, Page ID # 8-9 (¶¶ 48-49). Its schedule and culture are informed by the Catholic Church's liturgical calendar, with school-wide events and celebrations coinciding with the Catholic Church's recognized feasts, holy days, and liturgical seasons. Compl., R. 1, Page ID # 7 (¶¶ 38-39).

In particular, Sacred Heart's teachings on human sexuality rest on a foundation of sacred scripture, tradition, and Catholic doctrine. Catholic doctrine begins with the core belief that "God created man in his own image . . . male and female he created them. Compl., R. 1, Page ID # 11 (¶¶ 68-69). It holds that all sexual activity outside of marriage is sinful and rejects the notion that a man or woman can "transition" to a gender inconsistent with his or her biological sex. Compl., R. 1, Page ID # 11-12 (¶¶ 71, 74-76). Due to this consistent adherence to the Church's teaching, Sacred Heart does not embrace transgender ideology or permit students to use a restroom, wear uniforms, or play on a sports team inconsistent with that student's biological sex. Compl., R. 1, Page ID # 15 (¶¶ 98,

103). Therefore, Sacred Heart also cannot affirm an individual's use of "preferred pronouns" inconsistent with biological sex. Compl., R. 1, Page ID # (¶ 105). If forced to do any of those things, or act in any way contrary to Catholic teaching, Sacred Heart will close its school. Compl., R. 1, Page ID # 32 (¶ 242).

Due to Sacred Heart's pervasive religious character, especially in light of *Hosanna-Tabor* and *Our Lady of Guadalupe*, there is no question that Sacred Heart qualifies for application of the ministerial exception. A review of Sacred Heart's mode of operating further demonstrates the centrality of religious faith and practice for its staff. For example, all faculty are required to attend Mass each day. Compl., R. 1, Page ID # 7 (¶ 44). All employees at Sacred Heart are required to support, live, and model the Catholic faith, its doctrines, and moral teachings. Compl., R. 1, Page ID # 9 (¶51). All employees must become "certified catechists," which means they are certified to teach the Catholic faith. *Id*. (¶ 52). Further, every year, employees sign a "memorandum of understanding" in which they swear an "oath of fidelity" to the teachings of the Catholic Church and their religious and moral duties. *Id*. (¶¶ 54, 56).) When new staff positions open, Sacred Heart's advertising and job postings emphasizes a requirement that employees believe, support, and model the Catholic faith. Compl., R. 1, Page ID # 13 (¶¶ 83, 86). Sacred Heart also maintains a standard of conduct for all employees requiring them to act in accordance with Catholic doctrine, including human sexuality.

Compl., R. 1, Page ID # 10-16 (¶¶ 59, 67-108). Sacred Heart requires its employees to embrace and follow the Church's doctrine on sexuality. Compl., R. 1, Page ID # 12 (¶ 79).

These allegations, which must be accepted as true for purposes of this appeal and which are not contested on the current record, amply demonstrate that Sacred Heart is an organization based on, and suffused by, religious principles. It asks and expects each of its employees to explicitly agree to these principles and act on them as they fulfill their spiritual responsibilities to interact with and raise the next generation. These realities demand application of the ministerial exception to Sacred Heart's employment decisions.

IV. Application of the First Amendment Requires Entry of a Preliminary Injunction Barring Michigan from Enforcing Its Statutes with Respect to Employment Decisions of Sacred Heart

Michigan's civil rights laws, as enacted by the legislature and interpreted by the Michigan Civil Rights Commission and Michigan Supreme Court, prohibit employers from discriminating on the basis of religion, sexual orientation, or gender identity. *See* Mich. Comp. Laws § 37.2202(1)(a); Mich. Civ. Rights Comm. Interpretive Statement 2018-1; *Rouch World, LLC v. Dep't of Civ. Rights,* 987 N.W.2d 501 (Mich. 2022) (addressing sexual orientation but not gender identity). After *Rouch World*, the legislature amended § 37.2202 to add the protection for sexual orientation and gender identity to the face of the statute. The

amended version of § 37.2202 will be effective 91 days after the end of the 2023 Legislative Session. The amended version also adds the protection to subsection (2), which prohibits employers from questioning "that elicits or attempts to elicit information" concerning that person's religion or that "expresses a preference, limitation, specification, or discriminated based on religion, . . . sex, . . . marital status," "sexual orientation," or "gender identity" or that keeps records of that information.

Sacred Heart, in fulfilling its religious mission, violates these provisions. To enforce them against it will directly interfere with its ability to hire, to set its terms of employment, to discipline, and to terminate its employees. It will be unable to hire employees based on their religious beliefs or even ask about religious practices prior to making employment decisions. Sacred Heart will also be unable to maintain its distinctly Christian character or provide Biblical education and character formation to its students, which is fundamental to its mission. All of these restrictions violate the First Amendment to the U.S. Constitution as outlined by *Watson*, *Kedroff, Milivojevich, Hosanna-Tabor*, and *Our Lady of Guadalupe*. Therefore, this Court should remand with instructions that Sacred Heart's motion for preliminary injunction should be granted.

Amici represent organizations with different beliefs and practices with respect to religious employment, but like Sacred Heart, they share in the reality

that all of their actions and missions depend upon the people they hire. *Amici*'s decisions about which employees to employ and how to operate their organizations must adhere to the organization's beliefs and practices to allow the organizations to best serve their religious purposes. Such decisions are reserved to the religious organizations by both the Free Exercise and Establishment Clauses. It lies at the core of the church autonomy doctrine.

Conclusion

This Court should reverse the district's decision and find that Sacred Heart has standing to pursue its claims. It should also instruct the district court to grant the motion for preliminary injunction so that Sacred Heart can pursue its religious mission in the hiring, terms of employment, discipline, and termination of its employees without fear of Michigan's recently amended civil rights laws.

Respectfully submitted,
this 22nd day of November, 2023.

s/ Steven W. Fitschen
Steven W. Fitschen
Counsel of Record
The National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 463-6133

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Fed. R. App. P. 32(a)(5)(A) and 32(a)(7)(B)(i) and the corresponding local rules, the attached Brief *Amicus Curiae* has been produced using 14-point Times New Roman font which is proportionately spaced and contains 4,647, including footnotes and excluding those portions not required to be counted, as calculated by Microsoft Word 365.

s/ Steven W. Fitschen
Steven W. Fitschen
Counsel of Record
The National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 463-6133

DATED: November 22, 2023

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2023, the foregoing brief was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit through the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Steven W. Fitschen
Steven W. Fitschen
Counsel of Record
The National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 463-6133