No. 18-107

In The
Supreme Court of the United States

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

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND AIMEE STEPHENS,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF *AMICUS CURIAE* WOMEN'S LIBERATION FRONT IN SUPPORT OF PETITIONER

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Amicus is the Women's Liberation Front ("WoLF"), an all-volunteer organization of radical feminists dedicated to the liberation of women by ending male violence, protecting reproductive sovereignty, preserving woman-only spaces, and abolishing gender and sex discrimination. WoLF has over 500 members who live, work, and attend school across the United States.

WoLF's interest in this case stems from its interest in protecting the safety and privacy of women and girls and preserving women's sex-based civil rights.[2] Those rights have been threatened by recent court decisions and agency policies that embrace the vague concept of "gender identity" in a manner that overrides statutory and Constitutional protections that are

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[1] None of the parties to this case nor their counsel authored this brief in whole or in part. No person or entity other than WoLF made a monetary contribution specifically for the preparation or submission of this brief. *Amicus curiae* files this brief with the written consent of all parties. All parties received timely notice of *amicus curiae*'s intention to file this brief.

[2] *Amicus* uses "sex" throughout to mean exactly what Congress meant when it incorporated the longstanding meaning of that term into Title VII of the Civil Rights Act: The biological classification of human beings as either female ("women") or male ("men"). *See* Merriam Webster Unabridged, "Sex," "either of the two major forms of individuals that occur in many species and that are distinguished respectively as female or male especially on the basis of their reproductive organs and structures," https://www.merriam-webster.com/dictionary/sex (last visited Jul. 23, 2019).

based explicitly on "sex," which is precisely what Respondents are asking the Court to do here.

Legally redefining "female" as anyone who claims to be female results in the erasure of female people as a class.[3] If, as a matter of law, *anyone* can be a woman, then *no one* is a woman, and sex-based protections in the law have no meaning whatsoever. The ruling below effectively repeals the sex-based protections in Title VII – a ruling that Congress surely did not intend.

WoLF previously challenged one such policy that purported to rewrite Title IX of the Civil Rights Act in a "Dear Colleague" letter issued by the U.S. Department of Justice and U.S. Department of Education on May 13, 2016 ("2016 Guidance").[4] *Women's Liberation Front v. U.S. Department of Justice, et al.*, No. 1:16-cv-00915 (D.N.M. Aug. 11, 2016). WoLF also submitted *amicus* briefs addressing the same question in this Court and in the U.S. Court of Appeals for the Fourth Circuit in *Gloucester County School Bd. v. G.G.*, 137 S. Ct. 1239 (2017) (Mem.) (vacating *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), and remanding),[5] and in this Court and in the U.S. Court of Appeals

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[3] *See* Orwoll, Andrea (2016) "Pregnant 'Persons': The Linguistic Defanging of Women's Issues and the Legal Danger of 'Brain-Sex' Language," *Nevada Law Journal*: Vol. 17: Iss. 3, Article 8.

[4] U.S. Dep't of Just. and U.S. Dep't of Educ., "Dear Colleague Letter on Transgender Students" (2016), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf.

[5] On August 9, 2019, the U.S. District Court for the Eastern District of Virginia granted summary judgment in favor of Gavin Grimm ("G.G."). *Gavin Grimm v. Gloucester Cty. Sch. Bd.*, No.

for the Third Circuit in *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (Mem.) (2019).

Although the 2016 Guidance was withdrawn on February 22, 2017, the threat to women's civil rights persists. The decision below essentially compels employers to engage in sex-role stereotyping, which this Court has expressly held violates Title VII of the Civil Rights Act. *See Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). It proclaims that women and girls are no longer recognized under federal law as a discrete category worthy of civil rights protection, but men and boys who claim to have a female "gender identity" are. If allowed to stand, it will mark a truly fundamental shift in American law and policy that strips women of their right to privacy, threatens their physical safety, undercuts the means by which women can achieve professional and educational equality, and ultimately works to erase women and girls under the law.

It not only revokes the very rights and protections that specifically secure *women's* right not to be discriminated against in the employment and educational arenas, but does so in order to extend those rights and

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4:15cv54 (E.D. Va. filed Aug. 9, 2019). The District Court's opinion is founded on its unquestioning embrace of "gender identity," and specifically the scientifically unsupported concept that sex is "assigned" externally rather than by chromosomes and genes, and on the notion that people who "identify as" the opposite sex must be treated as such in the eyes of the law. For reasons discussed in this brief, the decision is in conflict with science and with this Court's interpretation of Title IX and the Constitution.

protections to men *claiming* to be women. WoLF seeks to empower women and girls to advocate for their rights to privacy, safety, and association before government officials who might not otherwise consider the particular harms women and girls face if sex is redefined to mean "gender identity" under civil rights laws and the Constitution.

WoLF urges the Court to rule in favor of Petitioner and confirm that employers may not be compelled to engage in sex-stereotyping under the guise of "gender identity," and to give effect to longstanding sex-based protections under the law.

SUMMARY OF ARGUMENT

Sex and gender are not the same thing. Sex is grounded in material reality (i.e., the distinction between male and female,).[6] Gender, on the other hand, is a set of sex-based stereotypes that society imposes on the basis of sex, e.g., that girls like pink and boys like blue, or that women are nurturing and men are aggressive, and that women are emotional and men are rational. Feminists have been fighting against

[6] Homo sapiens (human beings) are within the taxonomic class of Mammalia, so-named for the presence of mammary glands, which are defined as "any of the large compound modified sebaceous glands that in female mammals are modified to secrete milk, are situated ventrally in pairs, and usually terminate in a nipple." Merriam Webster Unabridged, "Mammary Gland," https://www.merriam-webster.com/dictionary/mammary%20gland (last visited Jul. 25, 2019).

these stereotypes for hundreds of years. Respondents, and the Court below, on the other hand, seek to enshrine sex-based stereotypes in federal law.

Simply, Aimee Stephens is a man. He wanted to wear a skirt while at work, and his "gender identity" argument is an ideology that dictates that people who wear skirts must be women, precisely the type of sex-stereotyping forbidden by *Price Waterhouse*.

Unfortunately, Aimee Stephens did not simply challenge whether a sex-specific dress code for funeral home employees constitutes illegal sex-stereotyping under *Price Waterhouse*, which would have presented a much simpler issue. Instead, he has bootstrapped that much simpler claim into an attempt to revolutionize the legal meaning of "male" and "female" by redefining the fundamental meaning of the term "sex" under federal civil rights law.

In *Price Waterhouse* this Court ruled that discrimination on the basis of sex-stereotyping constitutes discrimination on the basis of sex. In that case, the plaintiff was a woman who was denied a workplace promotion because many of her male colleagues struggled with the fact that she did not conform to the sex-stereotypes imposed on women. This Court rightly ruled that this constituted discrimination on the basis of sex, in violation of Title VII of the Civil Rights Act. In doing so, this Court stated, "We need not leave our common sense at the doorstep when we interpret a statute." *Price Waterhouse*, 490 U.S. at 241.

The same is true here.

Importantly, re-affirming the prohibition on sex-stereotyping would also protect gay employees against workplace discrimination because heterosexuality functions as a sex-stereotype, in the sense that society tends to presume that people are heterosexual. Taking an action against a homosexual employee because of that person's sexuality would, therefore, constitute unlawful sex-stereotype sex discrimination. This case thus presents an additional opportunity for this Court to protect homosexual employees from discrimination on the basis of sex-stereotyping by re-affirming its previous ruling that discrimination on the basis of sex-stereotyping violates Title VII's prohibition on discrimination on the basis of sex.

Sex-stereotyping presents numerous dangers for women and girls, which Respondents and the Court below simply ignore. Women have been discriminated against in the workplace and the educational arena for thousands of years, problems that Title VII and Title IX were meant to remedy.[7] Likewise, Congress and the states have enacted numerous laws designed to remedy the discrimination, harassment, threats, and violence that women experience, all of which will be rendered meaningless if this Court decides that, as a matter of law, the word "sex" means "gender identity" which is no more than the ideology, lacking any coherent meaning whatsoever, adhered to by a small

[7] *See infra*, n.10, for an explanation as to how the interpretation of Title IX will be affected by the outcome in this case.

segment of society. There is no justification whatsoever for protecting it in civil rights law.

Finally, requiring the R.G. and G.R. Harris Funeral Homes to recognize Aimee Stephens as a woman would result in compelled speech, in violation of the First Amendment to the U.S. Constitution. Regardless of what Aimee Stephens, the Equal Employment Opportunity Commission, and the Sixth Circuit might believe about Stephens's sex, the R.G. and G.R. Harris Funeral Homes simply does not believe that Stephens is a woman. This Court cannot constitutionally force the funeral home to believe, or to state, otherwise. Doing so would be tantamount to compelling speech, in violation of the First Amendment.

For all of these reasons, WoLF urges the Court to: (1): re-affirm its ruling in *Price Waterhouse* that sex-stereotyping is impermissible discrimination on the basis of sex; (2) hold that the word "sex" in Title VII and Title IX means exactly what Congress intended when it enacted those laws, i.e., "[t]he distinction between male and female; or the property or character by which an animal is male or female";[8] and (3) reverse the Sixth's Circuit's grant of summary judgment to the EEOC.

[8] *See* Merriam Webster Unabridged, "Sex," n.2 above.

ARGUMENT

I. "SEX" DOES NOT MEAN "GENDER" OR "GENDER IDENTITY."

The Court below, like other state and federal courts across the country,[9] has completely re-written the definition of the word sex for the purpose of interpreting Title VII (and, by extension, Title IX).[10] This case presents an opportunity for the Court to affirm the unambiguously-expressed intent of Congress to prohibit discrimination on the basis of sex under Title VII, in order to remedy centuries of sex-based discrimination against women and girls.

Sex and gender (or "gender identity") are distinct concepts. The word "sex" has meaning – specifically, the distinction between male and female.[11] The Court

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[9] *See*, *e.g.*, *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (Mem.) (2019).

[10] Ever since this Court's decision in *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 75 (1992), which expressly relied on its Title VII decision in *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986), to hold that Title IX supported actions for damages, courts have read Title IX in light of Title VII. "This Court has also looked to its Title VII interpretations of discrimination in illuminating Title IX[.]" *Olmstead v. L. C. by Zimring*, 527 U.S. 581, 616 n.1 (1999) (Thomas, J., dissenting). "The identical standards apply to employment discrimination claims brought under Title VII [and] Title IX[.]" *Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 n.1 (2d Cir. 2000); *Preston v. Commonwealth of Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994).

[11] *See* Merriam Webster Unabridged, "Sex," n.2 above; Nat'l Inst. For Health, Genetics Home Reference: X chromosome (Jan. 2012), https://ghr.nlm.nih.gov/chromosome/X (last visited Dec. 3, 2018); Daphna Joel, Genetic-gonadal-genitals sex (3G-sex) and the misconception of brain and gender, or why 3-G males and

below essentially acknowledges this when it states that Respondent Aimee Stephens "was 'assigned male at birth'." *Equal Emp't Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 567 (6th Cir. 2018).

The words "assigned at birth" were initially intended to signify the assignment of sex to an infant whose sex was not immediately obvious because of ambiguity in observed genitalia – individuals with a disorder of sexual development.[12] No party to this litigation argues that Respondent Aimee Stephens has a disorder of sexual development. He simply wishes to be acknowledged as female, without providing any evidence that he is, in fact, female. The phrase "assigned at birth" has been entirely co-opted by a movement that seeks to use it to erase the physical differences between men and women, and thereby erase the category of women and girls as a group worthy of civil rights protection.

In reality, sex is observed and recorded (not "assigned") at birth by qualified medical professionals, and it is an exceedingly accurate categorization: an infant's sex is easily identifiable based on external genitalia and other factors in 99.982% of all cases; the miniscule fraction of individuals who have "intersex" characteristics (those individuals with disorders of

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3-G females have intersex brain and intersex gender, 27 Biology of Sex Differences, no. 3, Dec. 2012, at 1.

[12] Michigan Medicine, University of Michigan, "Disorders of Sexual Development (DSD) Resources," https://www.med.umich.edu/yourchild/topics/dsd.htm (last visited Jul. 26, 2019).

sexual development) are also either male or female; in vanishingly rare cases individuals are born with such a mix of characteristics that it is difficult to characterize – but they still do not constitute a third reproductive class.[13]

In stark contrast to sex, "gender" and "gender identity" refer to stereotypical roles, personalities, behavioral traits, and clothing fashions that are socially imposed on men and women,[14] in a system that operates to oppress women in particular.[15] "Gender identity" is simply a belief system, invented and embraced by a small subset of society, which claims that a person's affinity for sex stereotypes is innate.[16] Nowhere in the record below is there credible evidence to

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[13] Sax, Leonard, "*How Common Is Intersex? A Response to Anne Fausto-Sterling*." The Journal of Sex Research, 39, no. 3 (2002): 174-78. http://www.jstor.org/stable/3813612; Dawkins, R., *The Ancestor's Tale, A Pilgrimage to the Dawn of Evolution*, 135 (Mariner Books ed. 2005) (Nat'l Institutes for Health, Genetics Home Reference: SRY gene (Mar. 2015) https://ghr.nlm.nih.gov/gene/SRY.pdf .

[14] *See Doe v. Boyertown Area Sch. Dist., supra* n.9, quoting *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017) ("By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth.").

[15] *See* Jeffreys, Sheila, GENDER HURTS 1-2 (Routledge 2014) (" 'Gender', in traditional patriarchal thinking, ascribes skirts, high heels and a love of unpaid domestic labour to those with female biology, and comfortable clothing, enterprise and initiative to those with male biology.").

[16] *See* Rebecca Reilly-Cooper, *Gender is Not a Spectrum* (Aeon Jun. 28, 2016); Cordelia Fine, *Testosterone Rex* (W.W. Norton & Co., 2017).

support the argument that "gender identity" is innate, has a supposed biological basis, or that every human being has a "gender identity." Further, to assert as the Sixth Circuit did, that sex-based stereotypes have "a deeply personal, internal genesis" is insulting to women and girls who reject the prison of femininity. And although the psychological profession has developed the concept of "gender identity disorder" and "gender dysphoria" to label certain mental health conditions, there is no evidence that these conditions somehow change the material physical reality of genetically-encoded sex. In any event, "gender identity" requires nothing more than a self-declared feeling.

The entire concept of "gender identity" is rooted in the notion that males and females have particular sex-specific ways of feeling and thinking, but scientists have demonstrated time and again that this simply is not true.[17] This science demonstrates that gender is not innate, but rather a collection of sex-based stereotypes that society imposes on people on the basis of sex, where women are understood to like particular clothing and hair styles and to have nurturing, unassuming personalities, whereas men are said to like a different

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[17] *See*, *e.g.*, Joel, Daphna, et al., *Can We Finally Stop Talking About 'Male' and 'Female' Brains?* The New York Times (Dec. 3, 2018); Karen Kaplan, *There's No Such Thing as a 'Male Brain' or a 'Female Brain' and Scientists Have the Scans to Prove It*, L.A. Times (Nov. 30, 2015), http://www.latimes.com/science/sciencenow/la-sci-sn-no-male-female-brain-20151130-story.htmo; Lila MacLellan, *The biggest myth about our brains is that they are "male" or "female,"* Quartz (Aug. 27, 2017), https://qz.com/1057494/the-biggest-myth-about-our-brains-is-that-theyre-male-or-female/.

set of styles and to have ambitious, outgoing personalities.[18] This is simply old-fashioned sexism.

Every party to this case agrees that Respondent Aimee Stephens is male. Yet he is asking to be recognized as a woman, and therefore as a female person, under the law. This would change the legal meaning of the term "woman," a sweeping alteration in civil rights law that will not remain confined to employment law.

Respondents are asking the court to recognize discrimination on the basis of "transgender" identity, a class that neither Respondents nor supporting *amici* have defined in any meaningful non-circular way. The points on which Respondents claim discrimination – using a name commonly associated with women, wanting to dress and groom in ways associated with women – are contentious precisely because Respondent Aimee Stephens is correctly recognized as male and therefore as a man. Sex stereotypes, like bona fide occupational qualifications and sex-based dress codes, apply to people on the basis of sex. The neologism "transgender" is not a discrete category of persons any more than persons who have been diagnosed with "gender

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[18] *See*, *e.g.*, *Amicus* Brief of the National PTA, *et al.* in Support of Appellees at 22, *Doe v. Boyertown Area Sch. Dist., No. 17-3113* (3d Cir. 2018) (quoting a self-described "trans[gender] girl" as stating, "When I was little I loved to play with dolls and play dress up. I loved painting my nails too. Wearing my mom's high heels was my favorite!") These stories peddle the sexist stereotype that a child must be a girl if the child likes playing with dolls, dressing up, painting nails, and wearing high heels.

dysphoria" or "gender identity" constitutes a new sexual-reproductive class.

If Aimee Stephens wished to challenge the legality of sex-specific dress codes under Title VII, he could have done so. Instead, he is attempting to redefine the term "sex" to mean "gender identity" under federal civil rights law, and potentially throughout the U.S. Code, and for every person in the U.S.

The entire concept of "gender identity" is a dangerous one, especially in the context of civil rights laws designed to prevent sex-based discrimination against women and girls. Moreover, the concerns outlined in this brief are not theoretical. The movement to permit people to self-identify as the opposite sex, or as any "gender," has already had material consequences around the world. In the U.S., women are being forced to share locked prison cells with men who claim to "identify as women."[19] Selina Soule, a high school track athlete, has filed a complaint with the U.S. Department of Education because she was required to compete against male athletes who claimed to "identify as girls," and very likely lost athletic scholarship opportunities because boys were allowed to participate in competitions previously set aside for high school

[19] Lauren McGaughy, "Texas lawsuit targeting transgender inmates continues after Trump reverses Obama-era protections," Dallas News (May 2018), https://www.dallasnews.com/news/courts/2018/05/25/texas-lawsuit-targeting-transgender-inmates-continues-after-trump-reverses-obama-era-protections (last visited Jul. 20, 2019).

girls.[20] In Canada, a man who "identifies as a woman" is suing 16 female aestheticians – the majority of whom are women of color who work out of their own homes – who refused to perform hair-removal services that would involve handling his genitalia, and two of these women have, at the time of writing, already been put out of business as a result.[21] In the U.K., a man who goes by the name of Karen White, who had previously been convicted of rape, was placed in a women's prison where he went on to sexually assault additional women.[22] The list goes on and on.

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[20] Samantha Pell, "Girls say Connecticut's transgender athlete policy violates Title IX, file federal complaint," Washington Post (Jun. 19, 2019), https://www.washingtonpost.com/sports/2019/06/19/girls-say-connecticuts-transgender-athlete-policy-violates-title-ix-file-federal-complaint/?utm_term=.ca5105f1da53 (last visited Jul. 20, 2019); *see also* "Title IX Discrimination Complaint on Behalf of Minor Children Selina Soule, [Second Complainant], and [Third Complainant]," submitted to Dept. of Ed. Office of Civ. Rights on Jun. 17, 2019, available at https://www.adflegal.org/detailspages/case-details/selina-soule---title-ix-complaint (last visited Jul. 25, 2019). The Department has since decided to investigate Ms. Soule's complaint. *See* "OCR to Investigate Connecticut's Transgender Inclusion," Athletic Business, Aug. 2019 (last visited Aug. 12, 2019).

[21] Douglas Quan, "Accusations fly at human rights hearing into transgender woman's Brazilian wax complaint," National Post (Jul. 18, 2019), https://nationalpost.com/news/canada/accusations-fly-at-human-rights-hearing-into-transgender-womans-brazilian-wax-complaint (last visited Jul. 20, 2019).

[22] Nazia Parveen, "Karen White: how 'manipulative' transgender inmate attacked again," The Guardian (Oct. 11, 2018), https://www.theguardian.com/society/2018/oct/11/karen-white-how-manipulative-and-controlling-offender-attacked-again-transgender-prison (last visited Jul. 20, 2019).

Numerous additional consequences follow from the conflation of sex to mean "gender" or "gender identity." For example, sex is a vital statistic; "gender" and "identity" are not. Society has many legitimate interests in recording and maintaining accurate information about its residents' sex, for purposes of identification, tracking crimes, determining eligibility for sex-specific programs or benefits, and determining admission to sex-specific spaces, to name just a few examples. In contrast, there is no legitimate governmental interest in recording a person's subjective "identity" or giving that identity legal significance in lieu of sex.

Additionally, as demonstrated consistently by the FBI's Uniform Crime Reporting system and similar state systems, women face a dramatically disproportionate statistical risk of violence, rape, assault, or voyeurism, and in the vast majority of cases women suffer these harms at the hands of men. For crimes reported by law enforcement to the FBI in 2015, men committed over 88 percent of all murders, 97 percent of rapes, 77 percent of aggravated assaults, and 92 percent of sex offenses other than rape or prostitution.[23] Redefining sex to mean "gender identity" would skew basic crime statistics traditionally recorded and analyzed according to sex. Males who commit violent crimes against women should not be permitted to obscure their sex by simply "identifying as women."

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[23] Dept. of Justice Fed'l Bureau of Investigation, 2015 Crime in the United States, Table 33, *Ten-Year Arrest Trends by Sex, 2006–2015*, https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-33 (last visited Dec. 3, 2018).

The desire to treat all people with dignity and respect is a noble one. But that is not what this case is about. If the word "sex" is redefined in a circular manner; if the words "women" and "girls" have no clear meaning; if women and girls have not been discriminated against, harassed, assaulted, and murdered because of their sex; if women are not a discrete legally-protectable category, then one might rightly wonder what women been fighting for all this time. Women and girls deserve more consideration than the ruling below gives them.

II. SEX-ROLE STEREOTYPING, WHICH RESPONDENTS SEEK TO ENSHRINE IN LAW, IS UNLAWFUL.

The plaintiff in *Price Waterhouse*, a senior manager working for a nationwide professional accounting partnership, had been described as "aggressive, unduly harsh, difficult to work with and impatient with staff." *Price Waterhouse*, 490 U.S. at 235. But these criticisms were not sex-neutral. Partners at the firm also characterized her as "macho," stated that she "overcompensated for being a woman," advised her to take "a course at charm school," criticized her use of profanity as "unladylike," and maintained that she "ha[d] matured from a tough-talking somewhat masculine hard-nosed [manager] to an authoritative, formidable, but much more appealing lady [partner] candidate," and she was advised that if she wanted to be promoted, she would need to "walk more femininely, talk more femininely,

dress more femininely, wear make-up, have her hair styled, and wear jewelry." *Id*.

This Court ruled that this pattern of events constituted sex-stereotyping, and that treating an employee unfavorably because of it violates Title VII.:

> [E]ven if we knew that [plaintiff] Hopkins had "personality problems," this would not tell us that the partners who cast their evaluations of Hopkins in sex-based terms would have criticized her as sharply (or criticized her at all) if she had been a man. It is not our job to review the evidence and decide that the negative reactions to Hopkins were based on reality; our perception of Hopkins' character is irrelevant. We sit not to determine whether Ms. Hopkins is nice, but to decide whether the partners reacted negatively to her personality because she is a woman.[24]

There was no confusion in that case about what the words "sex," "woman," and "man" meant. This Court saw clearly that Hopkins was being treated unfavorably, at least in part, because she was female. In fact, in its opinion, this Court used the word "female" 34 times when referring to Hopkins and other female employees. The Court knew what the word "female" meant, and means, and did not trouble itself with the question of whether Hopkins "felt like a woman."

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[24] *Id*. at 258.

The ruling below asserts that Aimee Stephens is "a transgender woman,"[25] based on the notion that Stephens is "the person that [her] mind already is," and Stephens' desire to wear clothing designed for women out of a desire to "live . . . as a woman." The ruling below is, therefore, simply an enshrinement of the discredited "brain-sex" theories and sex-based stereotypes, which Title VII and this Court's decision in *Price Waterhouse* intended to abolish.

Price Waterhouse "sex-stereotyping" claims have become the prevailing avenue for "gender identity"-related employment discrimination claims. However, the use of *Price Waterhouse* to protect alleged "gender identity" status reflects a misunderstanding of the Court's holding on sex-stereotyping in that case. Hopkins (the plaintiff in *Price Waterhouse*) did not prevail because she was "transgender," but because she had been treated adversely based on the stereotypes her colleagues associated with her sex. Most courts have held that discrimination based on self-declared "transgender" status is not sex discrimination under Title VII, precisely because "sex" means "male" or "female" but not "transgender" or "gender identity."[26]

For example, in *Etsitty*, a male bus driver whose self-declared "gender identity" was female, was fired by

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[25] *Equal Emp't Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 567 (6th Cir. 2018).

[26] *See*, *e.g.*, *Etsitty v. Utah Transit Authority*, 502 F.3d 1215 10th Cir. 2007); *see also Ulane v. E. Airlines, Inc.*, 742 F.2d 1081, 1084 (7th Cir. 1984) and *Sommers v. Budget Mktg., Inc.*, 667 F.2d 749-750 (8th Cir. 1982).

the defendant transit agency because bus drivers use public restrooms on their routes, and Mr. Etsitty insisted on using women's restrooms. Relying on *Price Waterhouse*, Etsitty claimed that "terminating her because she intended to use women's restrooms is essentially another way of stating that she was terminated for failing to conform to sex stereotypes." *Etsitty*, 503 F.3d at 1224. While courts have generally recognized *Price Waterhouse* "sex stereotyping" employment discrimination claims in cases involving "transgendered" plaintiffs, the Tenth Circuit understood the inherent limits to this doctrine (*id*.):

> However far *Price Waterhouse* reaches, this court cannot conclude it requires employers to allow biological males to use women's restrooms. Use of a restroom designated for the opposite sex does not constitute a mere failure to conform to sex stereotypes.[27]

Importantly, this case also presents the Court with the opportunity to protect gay and lesbian employees from discrimination in employment. Society's general expectation is that people will be heterosexual. An employer may assume, for example, that a male employee is heterosexual. That same employer would presumably be surprised to see a photograph of a man on a male employee's desk and be informed that the man in the photo is the employee's husband. However, the expectation that the male employee would have a wife

[27] *Id.* at 1224.

rather than a husband is simply a gendered (i.e., sex-based) assumption.

Re-affirming that *Price Waterhouse* prohibits employers from taking adverse employment actions on the basis of sex-stereotyping would therefore prohibit this hypothetical employer from taking adverse action against the male employee on the basis of his having a husband, and would, therefore, benefit same-sex attracted employees. But, if the law cannot recognize sex, then it cannot recognize same-sex attraction as a sexual orientation. If the law cannot even recognize sexual orientation, it cannot protect it, and this Court's landmark decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), will be effectively erased.[28]

"Sex" and "gender" are distinct concepts that cannot be conflated. While some individuals may claim to feel or possess an "identity" that differs from their sex, or may embrace the sex-stereotypes associated with the opposite sex, such feelings have no bearing whatsoever on the person's vital characteristics, and should have no bearing on the Courts' application of civil rights law. This Court already made this determination in *Price Waterhouse*, and this matter presents an opportunity for the Court to re-affirm that decision.

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[28] This Court used the phrase "same-sex" a total of 165 times throughout the Syllabus and the various Opinions in *Obergefell*. At no point did it refer to "same-gender identity."

III. SEX-ROLE STEREOTYPING HAS DANGEROUS IMPLICATIONS FOR WOMEN'S EMPLOYMENT, EDUCATION, AND OTHER ARENAS.

Women have been discriminated against in the employment arena for thousands of years, on the basis of sex.[29] Even today, 42 percent of women state that they have faced some form of sex discrimination at work.[30]

It is perfectly clear what Congress meant when it included the word "sex" in Title VII of the Civil Rights Act. Senator John Tower, who opposed the Act, stated the following during Senate debate on the topic of definitions: "These terms are not defined. The term 'sex' is not defined, but I believe we can probably reason that that means an applicant is a man or a woman."[31] There is no basis, nor is there any reason, for this Court to hold that sex means anything other than what Senator Tower assumed that it did, and does.

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[29] During the first one hundred days that the unfair employment practice provisions of the Title VII were in effect, complaints alleging discrimination on the basis of sex made up approximately fifteen percent of the then-new EEOC's total case load. Francis J. Vaas, Title VII: Legislative History, 7 B.C.L. Rev. 431, 442 (1966), http://lawdigitalcommons.bc.edu/bclr/vol7/iss3/3 (last visited Jul. 19, 2019).

[30] Pew Research Center, "Gender discrimination comes in many forms for today's working women" (Dec. 14, 2017), https://www.pewresearch.org/fact-tank/2017/12/14/gender-discrimination-comes-in-many-forms-for-todays-working-women/ (last visited Jul. 19, 2019).

[31] 110 Cong. Rec. 7, 9029 (1964).

In addition, redefining "sex" to mean "gender identity" would mean that the thousands of colleges, universities, and schools that have women-only facilities, including dormitories, must now allow any male who "identifies as" female or "transgender" to live in them. Thus, women and girls who believed that they would have personal privacy of living only with other females will be surprised to discover that males will be their roommates and will be joining them in the showers. And those girls and their parents will only discover this *after* they move in because colleges and universities across the country have adopted policies that prohibit administrators from notifying them in advance, on the theory that students have a right to conceal their vital characteristics and to compel schools to instead recognize their subjective "gender identity." It is truly mind-boggling that informing women that men might have the "right" to share a bedroom with them is an "invasion of privacy," but it is *not* an invasion of privacy to invite those men into women's bedrooms in the first place.

Schools have long provided women-only dormitories and related facilities for female students. For example, Cornell College in Mount Vernon, Iowa, has a proud history of serving women, having been the first college west of the Mississippi to grant women the same rights and privileges as men, and the first, in 1858, to award a degree to a woman. At Cornell College, Bowman-Carter Hall has traditionally been a

residence hall for women only.[32] But if sex is redefined to mean "gender identity," then any male person will be legally entitled to live in Bowman-Carter Hall once he claims to identify as a woman.

The same is true at Cornell University, where Balch Hall has long been a women-only residence.[33] But that will end if "sex" is redefined to mean "gender identity," and the women of Balch Hall will be joined by any man – or group of men – who utters the magic words "I identify as a woman."

This controversy is not new. A similar debate occurred in the context of the Equal Rights Amendment (ERA), which would have enshrined into the United States Constitution the provision that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

In discussions about the ERA, some people raised concerns about the privacy and safety of women and girls in intimate facilities. But, in justifiably dismissing those concerns, then-Professor Ruth Bader Ginsburg noted that "Separate places to disrobe, sleep, perform personal bodily functions are permitted, in some situations required, by regard for individual privacy. Individual privacy, a right of constitutional

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[32] *See* Bowman-Carter Hall (1885), www.cornellcollege.edu/residence-life/housing/halls/bowman-carter/index.shtml (last visited Jul. 25, 2019).

[33] *See* Living at Cornell, Balch Hall, https://living.cornell.edu/live/wheretolive/residencehalls/Balch-Hall.cfm (last visited Jul. 25, 2019).

dimension, is appropriately harmonized with the equality principle."[34]

Privacy is one thing; violence is another. The violence that the Respondents seek to do to the definition of "sex" under civil rights laws is reflected in the violence that will result from this action. Without a second thought, places of employment, including schools and universities, are mandating that men must be permitted to invade women's spaces and threaten their physical safety in the places heretofore reserved exclusively for women and girls. That *any* male can justify his presence in *any* female-only space by saying "I identify as female" will not escape the notice of those who already harass, assault, and rape tens of thousands of women and girls every day. Data shows that more than 10 percent of college women experienced sexual assault in a single academic year, with almost half of those women reporting more than one such assault during that time.[35] Moreover, a majority of those assaults were committed by "students, professors, or other employees of the school."[36]

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[34] Ruth Bader Ginsburg, "The Fear of the Equal Rights Amendment," The Washington Post, April 7, 1975, https://www.washingtonpost.com/news/volokh-conspiracy/wp-content/uploads/sites/14/2016/05/ginsburg.jpg?tid=a_inl_manual (last visited Aug. 12, 2019).

[35] U.S. Department of Justice, Bureau of Justice Statistics, *Campus Climate Survey Validation Study Final Technical Report*, Jan. 2016, p. 85 (available at www.bjs.gov/content/pub/pdf/ccsvsftr.pdf) (last visited Jul. 25, 2019).

[36] *Id.* at 104.

Allowing any male to claim that he has a right guaranteed by federal law to be in women's most intimate and vulnerable spaces seriously undermines the laws designed to protect women in these places. For example, in Maryland it is a crime "to conduct visual surveillance of . . . an individual in a private place without the consent of that individual." Md. Code Ann. Crim. Law § 3-902(c)(1). The statute defines "private place" as "a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy" (*id*. § 3-902(a)(5)(i)), such as dressing rooms, restrooms (*id*. § 3-902(a)(5)(ii)), and any such room in a "school or other educational institution." *Id*. § 3-902(a)(5)(i)(6). If any male can assert that he has a legal right to be in a women's locker room because he identifies as female, it will be impossible to see how either this or similar laws in 26 other states could ever be enforced.

In many states, the relevant statute criminalizes only covert or "surreptitious" observation. For example, District of Columbia law provides that it is "unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing" in a bathroom, locker room, etc. D.C. Code Ann. § 22-3531(b). Similarly, in Virginia, "It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to

peep or spy into a restroom, dressing room, locker room, [etc.]." Va. Code Ann. § 18.2-130(B).[37]

But if sex can be self-declared, then it is *not* illegal for a man to walk into a women's locker room in the District of Columbia or Virginia and openly ogle the women there, because there is nothing "secret or surreptitious" about that action – just the opposite. Redefining sex to mean "gender identity," as the Court below has done, *effectively decriminalizes this predatory sexual activity* and gives a get-out-of-jail free card to any predator who smiles and says, "I identify as female."

After centuries of second-class treatment in all matters educational, the very preferences used to remedy that history and encourage women's education – most importantly perhaps, scholarships for women – will, if the word "sex" is redefined to mean "gender identity," be reduced by the demands of any males who

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[37] This same condition of the secret or hidden observer applies to voyeurism statutes in at least 15 other states. *See* Del. Code Ann. tit. 11, § 820 ("peer or peep into a window or door"); Fla. Stat. Ann. § 810.14 ("secretly observes"); Ga. Code Ann. § 16-11- 61 ("peeping Tom"); Haw. Rev. Stat. Ann. § 711-1111 ("peers or peeps"); Mich. Comp. Laws Serv. § 750.167 ("window peeper"); Miss. Code Ann. § 97-29-61 ("pries or peeps through a window"); Mont. Code Ann. § 45-5-223 ("surreptitious"); Nev. Rev. Stat. Ann. § 200.603 ("surreptitiously conceal . . . and peer, peep or spy"); N.C. Gen. Stat. § 14-202 ("peep secretly"); N.D. Cent. Code § 12.1-20-12.2 ("surreptitiously"); Ohio Rev. Code Ann. § 2907.08 ("surreptitiously"); R.I. Gen. Laws § 11-45-1 ("window, or any other opening"); S.D. Codified Laws § 22-21-1 ("peek"); Wyo. Stat. § 6-4-304 ("looking in a clandestine, surreptitious, prying or secretive nature").

"identify as female." For example, will Alpha Epsilon Phi, a women's legal sorority that sponsors the Ruth Bader Ginsburg Scholarship for female law students, now be forced to open its scholarships to males purely on the basis of "gender identity?"

Virtually all schools have endowed scholarships. Princeton, for example, has the Peter A. Cahn Memorial Scholarship, the first scholarship for female students at Princeton, and the Gary T. Capen Family Scholarship for International Women. For graduate students, Cornell University's School of Veterinary Medicine has at least four scholarships intended to benefit female students.[38]

Given the struggles that women have gone through to become lawyers (*see*, *e.g.*, Ruth Bader Ginsburg, *The Progression of Women in the Law*, 28 Val. U. L. Rev. 1161 (1994)), it is not surprising that law schools also have established such scholarships. *See*, *e.g.*, the Joan Keyes Scott Memorial Scholarship, the Lillian Goldman Perpetual Scholarship Fund and the Elizabeth Warke Brenm Memorial Fund at Yale Law School.[39]

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[38] *See* Cornell University College of Veterinary Medicine Scholarship List, https://www2.vet.cornell.edu/education/doctor-veterinary-medicine/financing-your-veterinary-education/policies-funding-sources/college-scholarships/scholarship-list (last visited Jul. 25, 2019).

[39] *See* Yale Law School Alumni and Endowment Funds, http://bulletin.printer.yale.edu/htmlfiles/law/alumni-and-endowment-funds.html (last visited Dec. 24, 2018).

Nor are such scholarships supporting women confined to private institutions. For example, at the University of Iowa, undergraduate women are supported by the Madeline P. Peterson Scholarship[40] and Ohio University has the Mary Ann Healy Memorial Scholarship for female business students.[41] This list goes on and on.

Twenty years ago, this Court eloquently described how women's physiology was used as an excuse to deny them education:

> Dr. Edward H. Clarke of Harvard Medical School, whose influential book, Sex in Education, went through 17 editions, was perhaps the most well-known speaker from the medical community opposing higher education for women. He maintained that the physiological effects of hard study and academic competition with boys would interfere with the development of girls' reproductive organs. *See* E. Clarke, Sex in Education 38-39, 62-63 (1873); *id.*, at 127 ("identical education of the two sexes is a crime before God and humanity, that physiology protests against, and that experience weeps over"); *see also* H. Maudsley, Sex in Mind and in Education 17 (1874) ("It is not that girls have no ambition, nor that they

[40] *See* Madeline P. Peterson Scholarship for American Indian Women, https://diversity.uiowa.edu/awards/madeline-p-peterson-scholarship-american-indian-women (last visited Jul. 25, 2019).

[41] *See* Scholarship Library, Mary Ann Healy Memorial Scholarship, http://www.scholarshiplibrary.com/wiki/Mary_Ann_Healy_Memorial_Scholarship_(Ohio_University_Main_Campus) (last visited Jul. 25, 2019).

> fail generally to run the intellectual race [in coeducational settings], but it is asserted that they do it at a cost to their strength and health which entails life-long suffering, and even incapacitates them for the adequate performance of the natural functions of their sex."); C. Meigs, Females and Their Diseases 350 (1848) (after five or six weeks of "mental and educational discipline," a healthy woman would "lose . . . the habit of menstruation" and suffer numerous ills as a result of depriving her body for the sake of her mind). *United States v. Virginia*, 518 U.S. 515, 536 n.9 (1996).

The ruling below effectively denies that sex is a meaningful legal category. Yet, the text of the Nineteenth Amendment reads, "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."[42] Surely, everyone knew what a woman was when the law prohibited women from voting; at no point were those disenfranchised women asked whether they identified with the sex-stereotypes or social limitations imposed on women at the time.

If "sex" is ambiguous in Title VII, then there is no logical reason why "sex" or "female" or "woman" or "girl" is any less ambiguous when used in any other law designed to remedy centuries of discrimination against women.

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[42] U.S. Const. Amend. XIX. In addition, surely the founders of the ACLU Women's Rights Project understood the category of people whose rights they were seeking to protect.

Nearly thirty years ago, Congress enacted the Women's Business Ownership Act of 1988 to "remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production." (Pub. L. No. 100-533, § 101), and creating the National Women's Business Council, of which at least four members would be women. *Id*., § 403(b)(2)(A)(ii). In 1992, noting that "women face significant barriers to their full and effective participation in apprenticeable occupations and nontraditional occupations," Congress enacted the Women in Apprenticeship and Nontraditional Occupations Act (Pub. L. No. 102-530, § 1(a); codified at 29 U.S.C. § 2501(a)), in order to "expand the employment and self-sufficiency options of women" in these areas via grants, technical assistance, and studies. *Id*., § 1(b); codified at 29 U.S.C. § 2501(b). In 2000, Congress amended the Small Business Act to create the Procurement Program for Women-Owned Small Business Concerns (Pub. L. No. 106-554, § 811; codified at 15 U.S.C. § 637(m)) in order to create preferences for women-owned (and economically disadvantaged women-owned) small businesses in federal contracting. In 2014, Congress again amended the Small Business Act (Pub. L. No. 113-291, § 825; codified at 15 U.S.C. § 637(m)) to include authority to award sole-source contracts under this program. Neither in 1988, nor 1992, nor 2000, nor 2014, nor in any other remedial statute did Congress define "woman," so presumably these programs will soon become equally available to any man who "identifies" as one.

IV. THE RULING BELOW AMOUNTS TO GOVERNMENT-COMPELLED SPEECH, IN VIOLATION OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION.

There is no basis in law for requiring the R.G. and G.R. Harris Funeral Homes to refer to Aimee Stephens as a woman. Further, the compelled speech implications of requiring individuals, organizations, and businesses to use particular pronouns, or to refer to someone as the oppose sex, is a growing problem, with serious First Amendment implications.[43]

Aimee Stephens and the EEOC would have this Court rule that the R.G. and G.R. Harris Funeral Homes *must pretend* that it believes that Aimee Stephens is female, and use female pronouns to refer to him.[44]

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[43] In 2016, for example, New York City adopted a resolution that requires employers, landlords, and all businesses and professionals to refer to people by their "preferred pronouns," or face a penalty of $125,000 to $250,000. Eugene Volokh, "You can be fined for not calling people 'ze' or 'hir,' if that's the pronoun they demand that you use." Washington Post (May 17, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/05/17/you-can-be-fined-for-not-calling-people-ze-or-hir-if-thats-the-pronoun-they-demand-that-you-use/?utm_term=.a1af6c0ccbfa (last visited July 20, 2019).

[44] Notably, the Court below fully acknowledges that Aimee was "born male." *Equal Emp't Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d at 566. As explained above, if a person is born male, that person *is* male. This simple fact of nature is often confused. For example, some, such as the Court below, seem to be of the view that people who "identify as transgender" or "are transgender" were actually born as the sex

This Court has ruled, however, that government-compelled speech violates the First and Fourteenth Amendments to the U.S. Constitution.[45] In *Barnett*, school children were being required to salute the U.S. flag while reciting the Pledge of Allegiance. The Court characterized this as "a compulsion of students to declare a belief," and noted that the children were "not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means."[46] The Court went on to ask "whether this slow and easily neglected route to aroused loyalties constitutionally may be short-cut by substituting a compulsory salute and slogan,"[47] and answered the question in the negative. The situation is the same here. The R.G. and G.R. Harris Funeral Homes simply does not

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that they are. Others assert that people who refer to themselves as "transgender" actually *are* the opposite sex, and the evidence put forth to document this is never anything more than such a person's "innate knowledge of who they are." *See*, *e.g.*, National Center for Transgender Equality, "Frequently Asked Questions about Transgender People," https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people (last visited Jul. 19, 2019). None of this discussion is in any way internally consistent.

[45] *See West Virginia Bd. of Educ. v. Barnett*, 319 U.S. 624 (1943). *See also Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006) ("Some of this Court's leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say."); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts.").

[46] *Barnett*, 319 U.S. at 631.

[47] *Id*.

believe that Aimee Stephens is a woman, and it is not the place of any branch of government to require that it do so, or say so.

Public institutions across the U.S. and the world are attempting to use their governmental power to mandate that individuals believe and verbally express the view that it is possible for men to become women, and vice versa. For example:

— Peter Vlaming was fired by a Virginia public high school because he refused to use a student's "preferred pronouns."[48]

— Allan M. Josephson, a doctor specializing in child and adolescent psychology, recently sued the University of Louisville alleging violations of the First Amendment and other claims, after the University fired him "for expressing his views regarding the proper treatment of youth experiencing gender dysphoria" on his own time.[49] Among other things, Dr. Josephson expressed concerns that current recommended "treatment" for children and adolescents "neglects the developmental needs of children and relies on ideas that are just not true," that "[t]he notion that gender identity should trump chromosomes, hormones, internal reproductive organs, external

[48] Associated Press, "Teacher fired for refusing to use transgender student's pronouns" (Dec. 10, 2018), https://www.nbcnews.com/feature/nbc-out/teacher-fired-refusing-use-transgender-student-s-pronouns-n946006 (last visited Jul. 19, 2019).

[49] Complaint, *Allen M. Josephson v. Neeli Bendapudi, et al.* (Mar. 29,2019, W.D. Ky.).

genitalia, and secondary sex characteristics when classifying individuals is counter to medical science," and that "[t]ransgender ideology neglects the child's need for developing coping and problem-solving skills necessary to meet developmental challenges." *Id.*

— In Pennsylvania, a group of people convicted of violent felonies are suing the state because the state prohibits people convicted of such crimes from legally changing their names, and these individuals believe that they are of the opposite sex and want to change their name to suit their self-described "gender identity."[50] But if the state of Pennsylvania wants to prohibit people convicted of violent felonies from changing their names, and if there is a legitimate governmental and public-safety interest in doing so, allowing these particular individuals to adopt new names on the basis of their subjective self-declared "gender identity" would make a mockery of the underlying legitimate governmental purpose of establishing the restriction in the first place.

— Lindsay Shepherd, a teaching assistant at a Canadian university, was disciplined for simply discussing the "gender identity"

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[50] *See* Valerie Russ, "Three transgender women challenge portion of Pennsylvania's name-change law," The Inquirer (May 30, 2019), https://www.inquirer.com/news/transgender-rights-women-name-change-lawsuit-identity-pennsylvania-20190530.html?outputType=amp&fbclid=IwAR3Phj4w4JSEuN_94yGYYbW49_m5lj3fa3__wrOk-gJiLmYfxfcFLHnlzFE (last visited Jul. 25, 2019).

movement and its demands regarding pronouns in her class.[51]

— In the U.K., Angelos Sofocleous was dismissed from Durham University's philosophy journal *Critique* because he used his social media account to share another individual's comment noting that "women don't have penises."[52]

All of these cases should be cause for alarm. As this Court rightly stated in *Barnett*, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."[53] This Court should adhere to that same principle today, and refuse to compel the R.G. and G.R. Harris Funeral Homes, or anyone else, to believe that men can be women.

[51] Scott Jaschik, "The Interrogation of a TA," Inside Higher Ed. (Nov. 22, 2017), https://www.insidehighered.com/news/2017/11/22/university-faces-uproar-over-recording-showing-how-teaching-assistant-was-questioned (last visited Jul. 19, 2019).

[52] Rosemary Bennett, "Student editor Angelos Sofocleous fired in transphobia row" (Sep. 21, 2018), https://www.thetimes.co.uk/article/student-editor-angelos-sofocleous-fired-in-transphobia-row-fww5ds6nj (last visited Jul. 19, 2019).

[53] *Barnett*, 319 U.S. at 642.

CONCLUSION

For all of the above reasons, WoLF urges the Court to: (1) re-affirm its ruling in *Price Waterhouse* that sex-stereotyping is impermissible discrimination on the basis of sex; (2) hold that the word "sex" in Title VII and Title IX of the Civil Rights Act means exactly what Congress intended when it enacted those laws, i.e., "[t]he distinction between male and female; or the property or character by which an animal is male or female;" and (3) reverse the Sixth Circuit's grant of summary judgment to the Equal Employment Opportunity Commission.

Respectfully submitted,

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