Case No. 26-2110

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FreeState Justice,
Plaintiff-Appellant,

v.

Equal Employment Opportunity Commission et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the District of Maryland
Case No: 1:25-cv-2482, Sat Below: Chief Judge George L. Russell, III

BRIEF OF ADVOCATES FOR TRANS EQUALITY AND OTHER NON-PROFIT ADVOCACY ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

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RULE 29(a)(4)(A) STATEMENT OF AMICI

Advocates For Trans Equality and the other amici are nonprofit organizations and associations. Amici do not have any corporate parents, do not have any stock, and therefore no publicly held company owns 10% or more of the stock of any amici.[1]

[1] In accordance with Fed. R. App. P. 29(a)(4)(E), amici state that no party's counsel authored this brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than amici, their members, or counsel—contributed money that was intended to fund preparing or submitting the brief. In accordance with Fed. R. App. P. 29(a)(2), all parties consented to the filing of this amicus brief.

INTERESTS OF AMICI AND INTRODUCTION

Amici Advocates for Trans Equality and eleven other nonprofit organizations advocate for the legal and political rights of transgender people, including trans and nonbinary workers, in the United States.[2] Amici's activities are varied and include representing transgender people in litigation and providing legal advice; organizing transgender communities and engaging in relevant policy debates at the federal, state, and local levels; and disseminating much-needed information to help the American public understand the lives and experiences of their transgender neighbors. Drawing on this deep experience, amici respectfully submit the following brief to present the unique perspectives of those who are most directly impacted by the government policy challenged in this action and the erroneous decision of the district court below: the transgender employees of this nation.

In *Bostock v. Clayton County,* 590 U.S. 644 (2020), the Supreme Court declared it to be the law of the land that discrimination against employees based on transgender status constitutes unlawful discrimination on the basis of sex prohibited by Title VII of the Civil Rights Act of 1964. Yet *Bostock* will remain an unfulfilled promise unless the Equal Employment Opportunity Commission

[2] A list of amici curiae and their statements of interest is attached as Appendix A.

("EEOC") carries out the responsibilities that Congress gave it as part of its mission "to vindicate the public interest in preventing employment discrimination." *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 326 (1980). These responsibilities—including intervening early in the course of a discrimination claim to gather information, encourage mutually beneficial resolution that prevents the further breakdown of relations and the loss of jobs, and conciliate disputes between employers and employees—are critical because, as Congress understood, employment discrimination is not readily addressable by government prosecution or even private litigation, except at the margins. Instead, Congress designed a statutory scheme in which the EEOC would seek to resolve discrimination cases largely through a layperson-initiated, informal, and noncoercive agency process without resorting to government enforcement.

The district court entirely overlooked this function, assuming incorrectly that the EEOC's role is akin to a criminal prosecutor's and that its actions are thus unreviewable under *United States v. Texas*, 599 U.S. 670 (2023). But the EEOC's multifaceted role is not analogous to the discretionary prosecutorial decision-making at issue in *Texas*. As described below, the EEOC provides mandatory administrative services to all complainants, services that are especially vital for transgender people, who continue to experience widespread discrimination and for

whom finding a lawyer and/or filing suit to vindicate Title VII rights are often not viable options.

In addition, the EEOC's decision to close the door to such services *exclusively* for transgender complainants is a direct affront to the Constitution. *First*, it undermines the separation and balance of powers between the branches. For our system of government to function, no Executive agency may unilaterally refuse to follow the law as enacted by Congress and interpreted by the Supreme Court. *Second*, the policy is a clear violation of the Constitution's guarantee of Equal Protection. The EEOC may not draw a class-based distinction to determine, as a categorical matter, that it will carry out its statutory duties under Title VII only for preferred groups and not for a politically disfavored one. Even the Court in *Texas* explained that such an extreme and targeted case of agency nonenforcement would not be immune from judicial review.

Amici respectfully submit that the district court's decision was based on an inapt and insufficiently reasoned analogy to the Executive's discretion in prosecuting the nation's criminal and immigration laws, and that the decision below should be reversed.

ARGUMENT

I. For Transgender Workers in the United States, the Need for the Protections of Title VII and the EEOC's Remedial Services Remains as Significant as Ever

A. Transgender Workers Continue to Experience Widespread Employment Discrimination and Harassment

The latest available social research confirms what amici know from their collective experience working with and advocating for transgender and nonbinary individuals. Even in the wake of *Bostock*, transgender and nonbinary people continue to encounter widespread workplace discrimination and harassment at shockingly high rates. *See generally* RJ Kubicki *et al.*, *Workplace Harassment of Transgender People: A Narrative Review*, 16 BEHAV. SCI. 479 (2026) (collecting and discussing recent studies). According to a large-scale study released in 2023, 70 percent of transgender respondents reported experiencing some form of workplace harassment or discrimination within the past year (including verbal harassment reported by 51 percent, sexual harassment by 41 percent, and physical harassment by 21 percent). Caroline Medina *et al.*, *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022*, CTR. FOR AM. PROGRESS (Jan. 12, 2023).[3] A 2024 study revealed that 82 percent of transgender respondents had experienced discrimination (including in hiring, firing, and

[3] Available at https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi community-in-2022/.

promotion) or harassment at some point in their careers; 53 percent reported discrimination in workplace decisions like hiring, firing, and promotion and 56 percent verbal, physical, or sexual harassment within the past five years. Brad Sears *et al.*, *Workplace Experiences of Transgender Employees*, UCLA SCHOOL OF LAW, WILLIAMS INSTITUTE (Nov. 2024) ("*Workplace Experiences*").[4]

Behind such statistics are real-world experiences that demonstrate the immense harms transgender individuals suffer as part of their daily efforts to simply go to work and earn a living. For example, in *Copeland v. Georgia Department of Corrections*, 97 F. 4th 766 (11th Cir. 2024), the plaintiff correctional officer was subject to near daily public humiliation because he was transgender, including being physically threatened by an armed colleague and being referred to as "it" and "that" in addition to persistent derogatory misgendering. *Id.* at 776-80. In *Eller v. Prince George's County Public Schools*, 580 F.Supp.3d 154 (D. Md. 2022), the plaintiff transgender woman schoolteacher spent years being subjected to physical assaults and threats of attack, including rape, as well as being called "it" and a number of slurs including ones alluding to pedophilia and prostitution, and being deadnamed[5] and misgendered. *Id*. at 173-74.

[4] Available at https://williamsinstitute.law.ucla.edu/publications/transgender-workplace-discrim/.

[5] Deadnaming is act of referring to a transgender person by the name given at birth but no longer used after transitioning because it does not align with their gender.

Such harassment remains all too pervasive for transgender workers, along with other discriminatory acts, including outright termination, loss of hiring and promotion opportunities, and denial of better work conditions, which such employees experience simply because they happen to be transgender or because they dared to speak up in response to unlawful treatment. *See, e.g.*, *Workplace Experiences* at 12-18 (recounting reports of verbal abuse including use of slurs, misgendering, deadnaming, as well as physical and sexual harassment from across the country).

Pursuant to the EEOC's new policy of refusing to process claims brought by transgender complainants, any allegation of these forms of harassment and other discrimination would be dismissed out of hand.[6]

See Deadname, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/deadname (last accessed Oct. 26, 2026).

[6] To the extent the EEOC purports to be continuing to consider complaints related to standalone allegations of hiring, firing, and promotion discrimination filed by transgender complainants, such a policy—if true—would not remedy the harassment, humiliation, degradation, and other harms suffered by transgender workers. Consider that, if reported today, the EEOC would have rejected out of hand and taken no action whatsoever in response to any of the egregious conduct reported in cases like *Copeland* and *Eller*.

B. Transgender Workers Are Economically Vulnerable and For Most Hiring Private Lawyers to Vindicate Title VII Rights is Not a Viable Alternative to the EEOC Process

Recent large-scale studies reviewing data from across the United States also show that transgender individuals experience significantly lower employment rates, lower household incomes, and higher rates of poverty than the rest of the population. *See* Christopher S. Carpenter *et al.*, *Economic Outcomes for Transgender People and Other Gender Minorities in the United States: First Estimates From a Nationally Representative Sample,* 89 S. ECON. J. 280 (2022) (analyzing nationally representative data from U.S. Census Bureau's Household Pulse Survey); Christopher S. Carpenter *et al.*, *Transgender Status, Gender Identity, and Socioeconomic Outcomes in the United States*, 73 INDUS. & LABOR REL. REV. 573 (2020) (analyzing representative data from 35 states compiled by Centers for Disease Control); *see also* Billur Aksoy *et al.*, *Understanding Labor Market Discrimination Against Transgender People: Evidence from a Double List Experiment and a Survey*, 71 MGMT. SCI. 659, 659 (2025) (citing multiple recent studies using population data indicating "gender minority individuals have significantly worse economic outcomes than otherwise similar cisgender people").

According to a 2024 study, 69% of transgender respondents nationwide earned under $60,000 a year. Caleb Smith *et al.*, *The LGBTQI+ Community Reported High Rates of Discrimination in 2024*, CTR. FOR AM. PROGRESS (Mar. 12,

2025).[7] In Maryland, amicus Advocate for Trans Equality's 2022 survey revealed that 28% of transgender respondents were living in poverty (compared to a nationwide poverty rate of 11.5%); 15% of those still in the labor force were unemployed and looking for work (compared to a nationwide rate of 3.6%); and 7% reported being unhoused within the past year. Advocates for Trans Equality Education Fund, *2022 U.S. Transgender Survey: Maryland Report* (Updated 2026) (citing U.S. Census and Bureau of Labor Statistics figures).[8]

This economic reality greatly limits the options available to transgender individuals facing workplace discrimination. To begin with, they are less likely to be able to afford a lawyer even if they have strong claims. *See* S.E. James *et al.*, *The Report of the 2015 U.S. Transgender Survey*, NATIONAL CTR. FOR TRANSGENDER EQUALITY at 152 (2016) ("2015 U.S. Survey")[9] (only 15% of those who reported being fired in past year for gender identity or expression contacted a lawyer). Given transgender workers' greater likelihood of having lower-paying jobs, contingency fee arrangements based on recovery of backpay are also not likely to be sufficiently large to attract private lawyers. Ultimately, as well as being

[7] Available at https://www.americanprogress.org/article/the-lgbtqi-community-reported-high-rates-of-discrimination-in-2024/.

[8] Available at https://ustranssurvey.org/download-reports/.

[9] Available at https://ustranssurvey.org/download-reports/.

prohibitively expensive, litigation is a lengthy and contentious process, fraught with risks including retaliation for those still in their jobs—given their economic vulnerability, it is not a viable path for transgender workers in most cases. In amici's experience, for transgender people to effectively vindicate their Title VII rights, access to a quicker effective remedial process is imperative.

II. Congress Created the EEOC to Provide "Noncoercive" Remedial Services for Workers Outside Litigation, A Function the District Court Erroneously Ignored When It Held the Challenged Policy to Be an Exercise of Enforcement Discretion

Congress created the EEOC to address these precise types of discriminatory harms and structural barriers to equal workplace opportunity on behalf of classes of workers protected by Title VII, which include, as the Supreme Court has held, transgender individuals. *See Bostock,* 590 U.S. at 662 (declaring that transgender status is covered by Title VII's prohibition of discrimination on the basis of "sex")[10]; *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44 (1974) (describing

[10] To the extent that the EEOC maintains that only discriminatory hiring and firing of transgender individuals is unlawful following *Bostock,* and not other forms of workplace discrimination plainly prohibited by Title VII, that position is meritless. Title VII classifies discriminatory hiring/firing as well as all other discriminatory treatment in the terms and conditions of employment as equally unlawful practices. *See* 42 U.S.C. § 2000e-2(a)(1) (making it unlawful "to fail or refuse to hire or to discharge any individual, *or otherwise to discriminate* against any individual with respect to his compensation, terms, conditions, or privileges of employment") (emphasis added). There is no textual or other basis to contend that for an otherwise protected class, some forms of discrimination are tolerable while others not. Such a strained and arbitrary interpretation finds no support in the text of the statute or *Bostock* itself, which instead repeatedly emphasizes Title VII's "starkly

purpose and structure of EEOC). Uniquely, in service of that end, Congress intended that the agency function not "simply as a vehicle for conducting litigation," but to "settle disputes through conference, conciliation, and persuasion." *Occidental Life Ins. Co. of California v. EEOC,* 432 U.S. 355, 368 (1977); *accord* 42 U.S.C. § 2000e-5(b) (directing that EEOC, upon finding of reasonable cause, "shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion"). "Congress chose cooperation and voluntary compliance as its preferred means." *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015) (citation and alterations omitted).

Indeed, Congress understood that the "vast majority" of the EEOC's impact would flow from providing this "informal, noncoercive" function rather than from any formal enforcement role: affording "quick and effective relief" to the many workers who may have viable Title VII claims yet are not able to find counsel, or for whom litigation is not a viable or practical solution. *Occidental Life*, 432 U.S. at 366, 368 (noting Congressional intent in enacting the Equal Employment Opportunity Act of 1972 ("EEO Act") that "the private lawsuit will be the

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broad terms" prohibiting "discriminat[ion] against employees for being . . . transgender." 590 U.S. at 662, 680; *see also id*. at 669 (noting Title VII also prohibits sexual harassment even though "conceptually distinct from sex discrimination"); *see also id.* at 681 (defining discrimination as "differences in treatment that injure protected individuals").

exception and not the rule, and that the vast majority of complaints will be handled through the offices of the EEOC") (citing 118 Cong. Rec. 7168)[11]; *see also Love v. Pullman Co.*, 404 U.S. 522, 527 (1972) (describing "statutory scheme in which laymen, unassisted by trained lawyers, initiate the process"). The EEOC offers mediation early in the administrative process to help resolve situations of ongoing harassment or other current disputes about workplace terms and conditions, allowing the employment to continue and forestalling the need for costly and long-lasting litigation that is in the interests or capacities of neither employee nor employer. As part of this process, the EEOC plays an invaluable role gathering relevant information from the parties, which allows both employer and employee to better assess the case and effectively work towards possible resolution. In addition, the EEOC's involvement can help deter possible retaliation. Relatedly, the EEOC's non-case specific outreach functions also play a pivotal, preventative role by educating employers about discriminatory practices.[12] For the reasons

[11] Congress belatedly provided the agency with the authority to file suit in federal court in 1972, eight years after its creation, while simultaneously "preserv[ing] the EEOC's administrative functions" related to conciliation and voluntary compliance. *Id*. at 368.

[12] Outside of case-specific enforcement activity, the EEOC "work[s] to prevent discrimination before it occurs through outreach, education, and technical assistance programs." *See* EEOC *Authority & Role*, available at https://www.eeoc.gov/overview (last accessed Oct. 26, 2026). Transgender employees will also be harmed to the extent that the EEOC's new policy leads

discussed above, for many transgender workers, such pre-litigation intervention is of paramount importance.

The district court entirely overlooked this critical and unique aspect of the EEOC's role, which in turn led to its erroneous dismissal of the complaint based on *United States v. Texas*. There, the Supreme Court, citing the Executive's discretionary authority in criminal and immigration enforcement, rejected a challenge by certain states seeking to compel greater arrest and prosecution of noncitizens with criminal convictions. *Texas*, 599 U.S. at 679 (stressing that this unique context "implicates not only normal domestic law enforcement priorities but also foreign-policy objectives") (citation and quotation marks omitted). But the role of the EEOC, especially given its statutorily required responsibility to provide "noncoercive" conciliation and its other non-litigative functions, cannot be simply analogized to the role of the Executive when it exercises its "absolute discretion to decide whether to prosecute a [criminal] case." *Id*. (quoting *United States v. Nixon*, 418 U.S. 683, 693 (1974)). The district court did not address at all the EEOC's multifaceted procedure in processing a charge, in which the parties are actively involved and invested in many cases to avoid litigation and in which the eventual possibility of actual (civil) enforcement figures little by design in the statutory

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employers to conclude that discrimination against transgender employees is no longer an issue of concern at workplaces.

scheme. Indeed, as Congress foresaw, the vast majority of complaints filed with the EEOC do not get resolved by agency suit. According to the EEOC's latest available annual report, in Fiscal Year 2025, the agency received 88,201 new charges and filed only 94 merits lawsuits; by contrast, the agency conducted 11,346 formal ADR mediations in addition to overseeing an unidentified number of conciliation processes (34.5% of which were resolved successfully). EEOC, *FY 2027 Agency Performance Plan and 2025 Agency Performance Report*[13] at 36-38 (acknowledging that the EEOC has a "statutory obligation" to provide conciliation "before the agency considers the matter for litigation").

Had the district court properly considered the EEOC's mandate, it would have understood that the challenged EEOC policy is not fairly akin to prosecutorial decision-making about whom to investigate and arrest, but rather constitutes the purposeful denial to a protected class of valuable and unique administrative services Congress mandated that the EEOC provide.[14] As described below, courts can and should review such an egregiously unlawful agency action.

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[13] Available at https://www.eeoc.gov/fy-2027-agency-performance-plan-app-and-fy-2025-agency-performance-report-apr.

[14] The district court thus also erred in adopting the reasoning of *Cross v. EEOC*, 810 F. Supp. 3d 88 (D.D.C. 2025), which held that a party aggrieved by the EEOC's blanket refusal to act on a complaint could not satisfy redressability because she still possesses the ultimate remedy of "pursu[ing] her Title VII claim" in court. *Id.* at 100. For the reasons noted above, this gloss ignores the nature of

III. The EEOC's Policy Undermines the Separation of Powers and Violates the Equal Protection Rights of Transgender Employees

Properly understood, the EEOC's policy represents a categorical refusal to carry out a core, remedial function on behalf of an entire class of persons that Congress and the Supreme Court together have declared is entitled to such services.[15] 42 U.S.C. § 2000e *et seq.* (prohibiting employment discrimination on the basis of "sex"); *Bostock*, 590 U.S. at 660-61 (declaring that workplace discrimination on the basis of transgender status is a form of sex discrimination because gender identity is "inextricably bound up with sex"). Where its two coordinate and coequal branches of Government have so spoken, the Executive Branch may not unilaterally refuse to comply with its obligations that the laws be faithfully executed. *See* U.S. Const., Art. II, § 3. In such a case, to ensure the proper balance and separation of powers between the branches, courts must properly exercise their duty of judicial review. *See Mullin v. Doe*, 609 U.S. 324, 340 (2026) (reiterating "general presumption in favor of judicial review" of "executive determinations"). The Supreme Court acknowledged these outer bounds

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the injury at stake, as transgender workers are deprived of the pre-litigation services that the EEOC has been mandated to provide them.

[15] The EEOC itself had previously adopted the position (as it must) that discrimination against transgender people is a prohibited form of sex discrimination under Title VII. *See Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995, at *11 (EEOC Apr. 20, 2012).

in *Texas,* holding that judicial review would be appropriate in cases of an agency's abdication of statutory duty, in contravention of proper balance of powers, or its selective enforcement of the law, in violation of the Equal Protection Clause.

Judicial review is required here even if EEOC's policy were an exercise of law enforcement discretion of the sort at issue in *Texas*. As the Supreme Court explained in that case, "review of agency non-enforcement" is appropriate regardless of traditional discretion concerns "if an agency 'has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities.'" *Texas*, 599 U.S. at 682-83 (quoting *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985)). That is precisely the circumstance here, where the EEOC has decided to fulfill its statutory responsibilities only as to some of the classes of people it is required to serve but not others. "Congress did not set agencies free to disregard legislative direction in the statutory scheme that the agency administers" or to abandon "guidelines for the agency to follow in exercising its enforcement powers," certainly not to substitute an agency's own discriminatory guidelines. *Heckler*, 470 U.S. at 832, 833. Nothing in the relevant statutes, including Title VII and the EEO Act, indicates that a decision to ignore an entire protected class was "committed to agency discretion," as required to preclude judicial review. *Id.* at 833-35, 838 (noting that exception to review under Administrative Procedure Act is a "narrow one" and courts must require agencies

to follow law "Congress has provided . . . to apply"); *see also Mach Mining*, 575 U.S. at 486-88 (noting that although EEOC has "wide latitude" in how to oversee its "conference, conciliation, and persuasion" role, it cannot refuse to oversee it at all because the statutory language is "mandatory, not precatory").

As this Court has previously noted, while Article III standing cannot be invoked to challenge "individual, case-by-base determinations of when to enforce existing law," an agency's adoption of a "broad or general enforcement policy" that purports to "stat[e] standards [the] agency deem[s] acceptable to implement statutory goals" is an entirely different matter. *Casa De Maryland v. U.S. Dep't of Homeland Sec.*, 924 F. 3d 684, 699 (4th Cir. 2019) (collecting cases). Categorically declining to serve transgender complainants with sex discrimination or retaliation complaints (and only transgender complainants among the classes protected by Title VII) is by definition such a "broad or general enforcement policy."[16] As such, it is properly subject to review for consistency with "statutory goals" set by Congress, not an exercise in "case by case" enforcement discretion.

[16] The district court below erred in failing to appreciate how this categorical policy is distinguishable from the claims in *Cross*, which challenged the EEOC's refusal to investigate disparate-impact complaints. There, the D.C. district court rejected the plaintiff's statutory abdication theory as "speculative" because the EEOC continued to investigate the same such charges for possible disparate-treatment liability; the plaintiff herself received a two-year investigation. *Cross*, 810 F. Supp. 3d at 99. Here, by contrast, transgender complainants raising sex discrimination and harassment claims categorically receive no processing whatsoever.

Indeed, even the district court opinion acknowledged that the new sorting scheme the EEOC now uses to relegate claims by transgender workers into obscurity deviates from previous guidelines and is "deeply troubling." JA 65. Under the Supreme Court's and this Court's precedent, the EEOC's action was more than just deeply troubling, it was unlawful and properly subject to judicial review.

This policy cries out for judicial review all the more because in automatically denying workers access to the EEOC solely on the basis of transgender status, rather than on any individualized determination of merit, it violates the equal protection guarantee of the Constitution. "[T]he Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (citation and quotation marks omitted). To that end, even where a discretionary law enforcement function is implicated, no government agency may categorically exclude a politically disfavored class of individuals in setting its prosecutorial priorities. *See United States v. Armstrong*, 517 U.S. 456, 464 (1996) (citing foundational caselaw holding that enforcement discretion is "subject to constitutional constraints," including "the equal protection component of the Due Process Clause of the Fifth Amendment"); *see also Heckler*, 470 U.S. at 838 (singling out whether "agency's refusal to institute proceedings violated any constitutional rights" as relevant to standing analysis). Indeed, even in *Texas*, the Supreme Court also specifically

recognized that the government may not engage in enforcement practices that amount to selective prosecution based on criteria prohibited under the Equal Protection Clause and evade judicial review. 599 U.S. at 681. Yet that type of practice is precisely what the EEOC's new blanket policy amounts to.[17] *See DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 197 n.3 (1989) ("The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause.") (citation omitted). And where such a bald, class-based distinction is challenged, Article III standing is easily satisfied. *See Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993) (holding that "[w]hen the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group," the injury for standing purposes "is the denial of equal treatment resulting from the imposition of the barrier … not the ultimate inability to obtain the benefit").

In short, the district court was wrong to hold that such an egregious abdication of the EEOC's responsibilities may not be judicially reviewed. This

[17] Like the district court below, *Cross*, on which the district court relied heavily, did not grapple with these Equal Protection issues, or with the Supreme Court's admonition in *Texas* that such selective prosecution-type claims are properly the subject of judicial review.

Court should correct that error to ensure that the EEOC continues to respect its role within our Constitutional system.

CONCLUSION

Transgender workers in the United States continue to face unlawful barriers to equal workplace opportunity, precisely of the sort Congress directed the EEOC to remedy. Because the EEOC's new policy of refusing to comply with its statutory and constitutional obligations to serve transgender employees is judicially reviewable, this decision below dismissing the complaint should be reversed.

DATED: October 30, 2026

/s/ Martha Reiser
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 5,407 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and including Appendix A.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

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Respectfully submitted,

/s/ Martha Reiser
Martha Reiser

APPENDIX A: LIST OF AMICI AND STATEMENTS OF INTEREST

Advocates for Transgender Equality Education Fund (A4TE) is a nonprofit organization dedicated to advocating for the rights of transgender and nonbinary individuals across the United States. A4TE, through its predecessor organizations National Center for Transgender Equality (NCTE) and Transgender Legal Defense and Education Fund (TLDEF), has appeared as amici in cases regarding transgender rights in a wide range of state and federal courts at all levels. A4TE seeks to achieve full lived equality for the transgender and nonbinary community through impact litigation, policy advocacy, and education. A4TE's efforts focus on critical areas such as employment, healthcare, housing, conditions of confinement, education, identity documents, and public accommodations.

The Alyssa Rodriguez Center for Gender Justice (ARC), a fiscally-sponsored project of Social and Environmental Entrepreneurs, builds gender justice movements across prison walls. ARC supports the legal and policy advocacy of incarcerated survivors, trans jailhouse lawyers, and other grassroots advocates working to end gender-based violence.

The Autistic Women & Nonbinary Network (AWN) provides community support, and resources for Autistic women, girls, transfeminine and transmasculine nonbinary people, trans people of all genders, Two Spirit people, and all people of marginalized genders or of no gender. AWN is committed to recognizing and

celebrating diversity and the many intersectional experiences in our community. AWN's work includes solidarity aid, community events, publications, fiscal support, and advocacy to empower disabled and autistic people in their fight for disability, gender, and racial justice.

The Center for Constitutional Rights (CCR) is a national, not-for-profit legal, educational and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated landmark civil and human rights cases challenging state violence and discriminatory policies, including policies that disproportionately impact LGBTQIA+ people.

Founded in 1999, **Equality California (EQCA)** is the nation's largest statewide LGBTQ+ civil rights organization. EQCA brings the voices of LGBTQ+ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ+ people. We advance civil rights and social justice by inspiring, advocating, and mobilizing through an inclusive movement that works tirelessly on behalf of those we serve. EQCA frequently participates in litigation in support of the rights of LGBTQ+ persons, including the organization's members in California and across the United States.

Gender Justice League is a membership-based organization headquartered in Seattle, Washington, with 2,200 organizational members in 38 states and 4 US territories. Gender Justice League serves as a civil and human rights organization for two-spirit, transgender, and gender diverse people and works to create a world where all people can live their lives safely, true to themselves, and free from discrimination on the basis of sex, gender identity, gender expression, or sexual orientation. Through its work directly with victims of crime, survivors of gender based violence and sexual assault, and other forms of harm, Gender Justice League helped more than 1,600 people since 2013 achieve safety and autonomy. As part of this work, it has supported hundreds of people in filing discrimination claims with local, state, and federal agencies and has direct familiarity with the matter before the Court.

Impact Fund is a non-profit legal organization that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and assistance, and serves as counsel for impact litigation across the country. Impact Fund has served as party or *amicus* counsel in major civil rights class actions nationwide, including cases on behalf of LGBT+ employees. Through its work, Impact Fund seeks to use and support impact litigation to achieve social justice for all communities.

Lambda Legal is the nation's oldest and largest nonprofit legal organization working for full recognition of the civil rights of lesbian, gay, bisexual and transgender people and everyone living with HIV through impact litigation, education, and policy advocacy. Lambda Legal has served as counsel of record or *amicus curiae* in seminal cases regarding the rights of LGBT people and people living with HIV, and more specifically, in numerous cases addressing the application of employment protections to transgender workers.

Legal Aid at Work (LAAW) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment rights of individuals from traditionally under-represented communities, including women, people of color, LGBTQ+ people, and individuals with disabilities. LAAW has a longstanding commitment to protecting the civil rights of transgender workers and ensuring access to justice when their rights are violated. The organization's history of advocating for transgender workers began with the establishment of its LGBT Project in 1999 and continues today through the work of the Gender Equity & LGBTQ Rights Program. The Gender Equity & LGBTQ Rights Program has represented many low-wage transgender workers in employment discrimination claims under both state and federal law and through administrative processes. Because of this work, LAAW has a strong interest in ensuring the EEOC fulfills its obligations to transgender people.

Make the Road New York (MRNY) is a nonprofit, membership-based community organization with more than 29,000 members that builds the power of immigrant and working class communities to achieve dignity and justice through legal and survival services, policy innovation, transformative education, and community organizing. As part of that mission, MRNY is a leading advocacy organization on behalf of immigrant trans, gender non-conforming, intersex and queer (TGNCIQ) New Yorkers through our Trans Immigrant Project (TrIP). Our TrIP committee provides community and peer support, Know Your Rights training and advocates for the rights of TGNCIQ community members, particularly those who are survivors of violence. Our legal team regularly represents TGNCIQ individuals in immigration, housing and employment proceedings; in federal court and before administrative agencies like the EEOC.

Southern Legal Counsel (SLC) is a Florida statewide not-for-profit public interest law firm that is committed to the ideal of equal justice for all and the attainment of basic human and civil rights. SLC's Transgender Rights Initiative was developed in 2017 to help bridge the gaps in access to justice by systemically providing assistance to the transgender community in Florida in areas such as access to accurate and authentic identification documents, representation in educational and employment proceedings, protection from discriminatory policies, and much more. SLC's Transgender Rights Initiative also utilizes federal impact

litigation to challenge state-sanctioned discrimination against transgender individuals, including lawsuits challenging gender-affirming care bans and restrictions, discriminatory employment and health insurance policies, school censorship laws, and barriers to legal authenticity, among other issues.

The Transgender Assistance Program of Virginia (TAP VA) is an all volunteer, trans led 501(c)(3) non-profit organization created to end homelessness within the transgender community in Virginia. TAP VA provides educational opportunities around the important fact that trans rights are human rights by explaining the intersectionality between homelessness, discrimination, socioeconomic status and racism within the trans community in Virginia.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

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COUNSEL FOR: Advocates for Trans Equality and Other Non-Profit Advocacy Organizations

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

/s/ Martha Reiser
(signature)

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10/30/26
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