No. 26-02110

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FREESTATE JUSTICE,

Plaintiff-Appellant,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ANDREA RUTH LUCAS, in her official capacity as Chair of the Equal Employment Opportunity Commission,

Defendants-Appellees,

On Appeal from the United States District Court
for the District of Maryland at Baltimore, 1:25-cv-02482-GLR

AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT FREESTATE JUSTICE AND THE REVERSAL OF THE DISTRICT COURT'S ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, The Civil Rights Clinic of Howard University School of Law, who is Amicus Curiae, makes the following disclosure:

1. Is party a publicly held corporation or other publicly held entity?

   YES ☐ NO ☑

2. Does party/amicus have any parent corporations? YES ☐ NO ☑

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES ☐ NO ☑

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation?

   YES ☐ NO ☑

5. Is party a trade association? YES ☐ NO ☑

6. Does this case arise out of a bankruptcy proceeding? YES ☐ NO ☑

7. Is this a criminal case in which there was an organization victim?

   YES ☐ NO ☑

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INTEREST OF AMICUS CURIAE

Howard University School of Law is the nation's first historically Black law school. For more than 150 years since its founding during Reconstruction, the law school has worked to train "social engineers" devoted to the pursuit of human rights and racial justice. As part of this mission, the Howard University School of Law's Civil Rights Clinic advocates on behalf of clients and communities fighting for the realization of civil rights guaranteed by the U.S. Constitution. The Clinic has recently filed amicus briefs in federal courts of appeals addressing workplace discrimination against Black women and discrimination against transgender people. *See* Proposed Brief of Howard University School of Law Civil Rights Clinic as *Amicus Curiae* in Support of Plaintiff-Appellant, *Brooks v. Bright Horizons Fam. Sols., Inc.*, No. 25-1830 (2d Cir. June 9, 2026), Dkt. No. 24 (discussing the history of 42 U.S.C. § 1981 and highlighting the heightened vulnerability of Black women to workplace discrimination at the intersection of race and sex); Brief of Amicus Curiae Howard University School of Law Civil Rights Clinic in Support of Plaintiffs-Appellees, *Jackson-Edney v. Labrador*, No. 26-04551 (9th Cir. filed Oct. 16, 2026), Dkt. No. 22 (assessing the parallels between Idaho's law barring transgender people from public restrooms that match their gender identity and Jim Crow-era restroom segregation laws).

Howard Law's Civil Rights Clinic has a profound institutional interest in ensuring that Title VII of the Civil Rights Act of 1964 is interpreted and applied consistently with its core purpose: to eliminate discrimination in employment, including through the Equal Employment Opportunity Commission's statutorily required investigation of all charges of discrimination. Amicus is concerned about the parallels that can be drawn between EEOC's abdication of its enforcement obligations in this case under Title VII and federal agencies' failure to enforce civil rights laws on behalf of Black Americans after the end of Jim Crow. Furthermore, the Clinic has a strong interest in ensuring that all workers, including Black workers, women, and transgender workers, who face unique forms of discrimination at the intersection of race and gender identity, have full access to the protections that Title VII affords.

Amicus files this brief pursuant to Federal Rules of Appellate Procedure 29(a)(2). Both parties have consented to the filing of this brief.[1]

[1] No party's counsel authored this brief in whole or in part. No monetary contribution intended to fund the preparation or submission of this brief was made by any party, any party's counsel, or anybody other than amici or their counsel. *See* Fed. R. App. P. 29(a)(4)(E)(i)–(iii)

SUMMARY OF ARGUMENT AND INTRODUCTION

Congress created the Equal Employment Opportunity Commission ("EEOC") pursuant to Title VII of the Civil Rights Act of 1964 at the height of the Civil Rights Movement. The passage of the Act was the result of persistent legal challenges to racial segregation, massive nonviolent protests, and marches by activists throughout the 1950s and 1960s. Full and fair enforcement of Title VII by the EEOC continues to serve as a necessary bulwark against the eradication of workplace discrimination on the basis of race, color, religion, national origin and sex, including sexual orientation or gender identity. Title VII's enduring protections depend on the EEOC complying with the congressional mandate that it processes *all* charges of workplace discrimination filed by employees, regardless of an employee's protected class. Yet, the agency is failing to fairly and fully investigate certain charges of discrimination brought by transgender charging parties, as a matter of agency policy ("Trans Exclusion Policy").

The district court erroneously held that the EEOC's inaction does not constitute an unconstitutional abdication of its statutory responsibilities under Title VII. First, such discriminatory enforcement harkens back to federal agencies' failure to enforce civil rights laws on behalf of African Americans after the end of the Jim Crow era and the passage of the Civil Rights Act. Second, that ruling is dangerously flawed and produces immediate, devastating consequences for workers most

vulnerable to workplace harassment and discrimination, including Black transgender workers who experience severe, disproportionate rates of workplace harassment that lies at the intersection of their racial and gender identities. As the U.S. Supreme Court noted, transgender individuals should not be "treated as social outcasts or as inferior in dignity and worth." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617, 631 (2018).

Finally, Amicus is gravely concerned that if this Court affirms the district court's ruling, the EEOC could selectively refuse to investigate certain charges brought by other protected groups, including those brought by Black workers, women, and other protected workers who experience higher rates of discrimination and harassment in the workplace. The district court's decision provides no limiting principle. Insulating EEOC discriminatory enforcement policies from judicial scrutiny would open the door for the agency to deny other protected groups access to the agency's investigation process on actual or perceived discriminatory grounds. Under Title VII, employees must generally file a charge with the EEOC before they are legally permitted to bring a discrimination lawsuit in federal court. Because workers who experience discrimination generally must exhaust these administrative remedies before filing a federal lawsuit, the EEOC's categorical dismissal of such claims as meritless robs them of the EEOC process and risks their ability to obtain

relief in court. Consequently, federal courts may lack the authority to grant any relief to workers who are unlawfully turned away by the agency.

A thriving, diverse society where all workers are safe and treated fairly requires that our workplaces be free from discrimination. This important goal is furthered by the full and fair enforcement of Title VII's civil rights protections. That is especially imperative for workers who face ongoing barriers to equal opportunity in the workplace, such as Black workers, other systemically marginalized workers, and those with multiple intersecting identities, including Black LGBTQ+ workers. Amicus urges this Court to reverse the district court's ruling dismissing Appellant's complaint.

ARGUMENT

I. By enacting and later strengthening Title VII of the Civil Rights Act, Congress sought to root out pervasive employment discrimination for all workers.

If affirmed, the lower court's ruling threatens to undermine the hard-fought civil rights gains and contravene congressional intent. Congress expanded and strengthened the enforcement powers of the EEOC because its initial, non-binding mediation and conciliation framework proved to be wholly insufficient at remedying systemic workplace discrimination.

Prior to the enactment of Title VII, employment discrimination proved pervasive and widespread. Although Reconstruction sought to establish equal citizenship rights for Black people, discriminatory laws, racism and even racial violence underscored the need for stronger federal protections. Jim Crow "lent the sanction of law to a racial ostracism that extended to churches and schools, to housing and jobs." C. Vann Woodward, *The Strange Career of Jim Crow* 7 (1955). These restrictions were particularly consequential in the employment context, where racial exclusion denied Black Americans economic opportunities and entrenched occupational segregation. Employers relegated Black workers to lower-paying, menial positions while excluding them from skilled work and other opportunities for advancement. Some states enforced workplace segregation by law. For example, a 1915 South Carolina statute prohibited textile factories from allowing Black and white employees to work in the same room. John Hope Franklin, *History of Racial Segregation in the United States*, 304 Annals of the Am. Acad. of Pol. & Soc. Sci. 1, 8 (1956).

Employment discrimination shaped the jobs Black Americans could hold, the wages they could earn, and their prospects for economic advancement, often with the force of law behind it. Employers overtly discriminated against employees in hiring, assignments, and pay without repercussion. Some employers banned Black people from employment opportunities through express provisions in job postings

and ads. *See, e.g.*, William A. Darity Jr. & Patrick L. Mason, *Evidence on Discrimination in Employment: Codes of Color, Codes of Gender*, 12 J. of Econ. Persp. 63, 66–67 tbl.1 (1998) (collecting examples of newspaper help-wanted ads from 1960 that expressed racial preferences). Others engaged in discriminatory segregation in the workplace. *Griggs v. Duke Power Co.*, 401 U.S. 424, 427 (1971) (concerning discriminatory hiring and discriminatory assignments of employees); *see also United States v. Ga. Power Co.*, 474 F.2d 906, 910 (5th Cir. 1973) ("Until July 29, 1963, an open and unvarying policy of the company prevented black persons from competing for any but the most menial and lowpaying jobs within the corporate structure.").

Earlier federal efforts to address employment discrimination relied on mechanisms that were wholly inadequate. In 1941, as the United States mobilized for World War II, Black workers continued to face discrimination in the defense industries despite the growing demand for labor. *See* Irving Bernstein, *Chapter 5: Americans in Depression and War*, U.S. Dep't of Lab.: History, https://www.dol.gov/general/aboutdol/history/chapter5 (last visited Oct. 29, 2026). In response, President Franklin D. Roosevelt issued Executive Order 8802, which prohibited discrimination based on "race, creed, color, or national origin" in federal employment and established the Committee on Fair Employment Practice to investigate complaints and recommend corrective measures. Exec. Order No. 8802,

6 Fed. Reg. 3109 (June 25, 1941). However, the Committee's limited enforcement authority constrained its ability to secure compliance and remedy against discriminatory practices. *See EEOC History: The Law*, U.S. Equal Emp. Opportunity Comm'n: History of the EEOC, https://www.eeoc.gov/history/eeoc-history-law (last visited Oct. 30, 2026).

Two decades later, the U.S. Commission on Civil Rights documented a "vicious circle of discrimination" in employment opportunities, including government contractors' "outright refusal to employ" Black workers. U.S. Comm'n on C.R., *Report Book 3: Employment*, 153, 155 (1961). That same year, President John F. Kennedy sought to strengthen federal oversight by issuing Executive Order No. 10925, which called for the "expansion and strengthening of efforts to promote full equality of employment opportunity." Exec. Order No. 10925, 26 Fed. Reg. 1977 (Mar. 6, 1961). The Order strengthened federal oversight of government contractors' employment practices, but its prohibition, like that of its predecessor, remained limited to race, creed, color, and national origin. *Id.* § 301. Nevertheless, it moved the government's oversight role beyond mere investigations and recommendations towards a more meaningful enforcement framework that could impose concrete consequences for noncompliance.

Women also faced persistent exclusion to equal employment opportunity and fair compensation. A 1963 report by the President's Commission on the Status of

Women found that one-third of surveyed private employers maintained separate pay scales that paid women less for performing "the same kind of work." U.S. President's Comm. on Priv. Emp., *Report of the Committee on Private Employment to the President's Commission on the Status of Women* 48 (1963). During legislative debates, civil rights advocate Pauli Murray urged Congress to retain the amendment prohibiting sex discrimination, warning that without it, Title VII would have protected "only half of the potential Negro work force." Pauli Murray, *Memorandum in Support of Retaining the Amendment to H.R. 7152, Title VII (Equal Employment Opportunity) to Prohibit Discrimination in Employment Because of Sex* 21 (Apr. 14, 1964). Murray also emphasized the difficulty "for a Negro woman to determine whether or not she is being discriminated against because of race or sex." *Id.* at 25, 43–44.

In response, Congress enacting Title VII in 1964, prohibiting employment discrimination based on race, color, religion, sex, and national origin and established the EEOC to investigate and resolve workplace discrimination complaints. While significant, Congress took further action and strengthened Title VII in 1972 by enacting the Equal Employment Opportunity Act, which expanded the EEOC's enforcement authority. As the House Report explained, "[t]he time has come for Congress to correct the defects in its own legislation. The promises . . . made in 1964 must [now] be made realities." S. Rep. No. 92-415, at 8 (1971). Congress authorized

the EEOC to bring civil actions against private employers, labor unions, and employment agencies when conciliation failed. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 4, 86 Stat. 103, 104–07. Congressional action to strengthen the EEOC's enforcement authority reflected its recognition that Title VII's protections would be rendered a dead letter without meaningful investigation and rigorous enforcement.

By categorically excluding transgender workers from certain aspects of the agency's investigative process, the EEOC, today, risks a full retreat from the fragile progress that has been made and risks reopening the gap between Title VII's guarantees and their enforcement that Congress sought to close.

II. The EEOC's Trans Exclusion Policy Echoes Federal Agencies' Discriminatory Refusal to Safeguard Black People's Civil Rights After the End of Jim Crow.

In addition to contravening congressional intent, a ruling in favor of appellees would undermine the protections afforded by the Supreme Court's ruling in *Bostock v. Clayton Cnty.*, where the Court held that Title VII's prohibition against discrimination "because of . . . sex" encompasses discrimination based on sexual orientation and transgender status. 590 U.S. 644, 661 (2020). The Supreme Court confirmed in *Bostock* that *all* of the protections against sex discrimination afforded under Title VII also protect LGBTQ+ individuals, including transgender individuals. *Id.* at 662 (holding that discrimination on the basis of gender identity and sexual

orientation is discrimination under the plain text of Title VII). This includes not only an employer's hiring and discharge practices but also "compensation, terms, conditions, or privileges of employment," 42 U.S.C. § 2000e-2(a)(1). As such, there is no agency with greater responsibility or authority to breathe life into the Court's *Bostock* ruling than the EEOC. The agency's current policy of limiting or refusing to process and investigate certain workplace discrimination, harassment, and retaliation charges filed by transgender workers, except in specific hiring, firing, or promotion contexts, flies in the face of the Supreme Court's recent ruling in *Bostock.*

While the Supreme Court has recognized that a federal agency's decision not to pursue a particular enforcement action is presumptively unreviewable, this presumption is not absolute. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). The Court explained that such agency inaction may be rebutted when the relevant statute "provided guidelines for the agency to follow in exercising its enforcement powers." *Id.* at 833 n.4. Here, Title VII imposes a clear statutory mandate that whenever a qualifying charge is filed, the EEOC "shall make an investigation thereof." 42 U.S.C. § 2000e-5(b).

The Commission's Trans Exclusion Policy is not a routine exercise of prosecutorial discretion; it is an extreme policy that amounts to an abdication of its statutory responsibilities. Accordingly, the EEOC is not entitled to a presumption of agency discretion when it categorically classifies certain gender-identity

discrimination claims as meritless and refuses to investigate solely because the claimant is transgender. This policy discriminatorily excludes an entire category of workers from the agency's full administrative process, effectively barring them from obtaining any type of legal remedy through the administrative process, and as a result may deny them access to the courts to vindicate their rights.

This discriminatory refusal to fully enforce Title VII for transgender workers echoes the pervasive failures of federal agencies to enforce the Civil Rights Act of 1964 and other laws in the post-Jim Crow era. Even after landmark civil rights laws were enacted, they often proved insufficient to dismantle segregation without active federal enforcement and oversight. For example, even after Title VII's enactment, pervasive workplace segregation and hiring discrimination persisted. This discrimination took many forms, including acts of overt discrimination in the workplace or rejecting job applicants based on African American-sounding names. Such discrimination required the EEOC to investigate and actively enforce the law. *See* Susan Hauser, *The Dream, the Reality: Civil Rights in the '60s and Today*, Workforce.com (Apr. 10, 2012), https://www.workforce.com/news/the-dream-the-reality-civil-rights-in-the-60s-and-today. Modern employment discrimination claims are now frequently brought when litigants exercise their private rights of action under the statute. If upheld, the agency's policy effectively shuts the door on victims of discrimination, recreating the systemic non-enforcement seen at the close

of the Jim Crow Era. *See id.* This categorical exclusion is especially egregious given that Congress established the EEOC for the precise purpose of ensuring active and even-handed investigation and enforcement of the very civil rights protections the agency now refuses to administer.

The EEOC's Trans Exclusion Policy is also at odds with precedent. In *Adams v. Richardson*, the Department of Health, Education, and Welfare claimed unreviewable discretion over its failure to enforce Title VI against racially segregated higher education systems. 480 F.2d 1159, 1161–62 (D.C. Cir. 1973) (en banc). The D.C. Circuit firmly rejected this argument and ruled that the agency could not rely on enforcement discretion to justify failing to effectuate the Civil Rights Act. The court distinguished between declining to enforce a single, isolated case and a systemic, continuous failure to fulfill its statutory civil rights obligations, and held that an agency is subject to judicial review when it has "consciously and expressly adopted a general policy which is in effect an abdication of its statutory duty." *Id.* at 1162.

Similarly, in *Gautreaux v. Romney*, the court examined segregated public housing in Chicago, where local housing authorities and the federal agency were complicit in perpetuating this systemic segregation. 448 F.2d 731, 737–39 (7th Cir. 1971). Although the Department of Housing and Urban Development knew of the local officials' discriminatory practices, it condoned their actions by continuing to

federally fund the programs while ignoring its mandate to affirmatively promote fair housing. The Seventh Circuit held that the federal agency's knowing acquiescence in the discriminatory housing programs violated the Civil Rights Act of 1964. *Id.* at 739–40. Ultimately, both *Adams* and *Gautreaux* firmly establish that agency discretion is not absolute and cannot be used as a shield to justify a federal agency's failure to meet their statutory mandates, particularly in the civil rights context. *See Adams*, 480 F.2d at 1162; *Gautreaux*, 448 F.2d at 737–40.

Other federal agencies have also failed to equitably serve communities, with resulting negative consequences of that exclusion. Take for example, the United States Department of Agriculture which provided Black farmers with inferior access to loans and services in violation of Title VI of the Civil Rights Act. *See* U.S. Comm'n on C.R., *Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the United States Department of Agriculture* 106 (1965); *see also Pigford v. Glickman*, 185 F.R.D. 82, 85 (D.D.C. 1999) (noting that "for decades . . . the Department of Agriculture . . . discriminated against African American farmers when they denied, delayed or otherwise frustrated the applications of those farmers for farm loans and other credit and benefit programs"), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), and *enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008). This kind of racially selective enforcement on the part of our federal agencies produced economic harms felt across generations and

has been soundly rejected by courts. Federal agencies must ensure fair and equal treatment of all people.

The EEOC cannot selectively withhold Title VII's protections from a protected class under the guise of exercising agency discretion. Failing to hold federal agencies like the EEOC accountable for the abdication of their duties results in grave injuries to people experiencing real harms and to communities that are most susceptible to pervasive discrimination.

III. Affirmance would allow the EEOC to close its doors to any protected class on discriminatory grounds.

Title VII's important protections remain necessary today. Black workers, other workers of color, and women continue to face discrimination and barriers to equal opportunity in the workplace. In 2020, the Gallup Center on Black Voices found that one in four Black workers reported experiencing workplace discrimination in the past year, and that 75% of them indicated that they felt they were discriminated against based on their race or ethnicity (compared to 61% of Hispanic workers and 42% of white workers). Camille Lloyd, *One in Four Black Workers Report Discrimination at Work*, GALLUP (Jan. 12, 2021), https://news.gallup.com/poll/328394/one-four-black%20workers-report-discrimination-work.aspx. A recent report also shows that Black employees are less likely than their white counterparts to receive timely promotions, with the largest turnover disparity occurring between Black and white women. Elizabeth Linos et al.,

Intersectional Peer Effects at Work: The Effect of White Coworkers on Black Women's Careers 3 (The People Lab at Harvard Kennedy Sch. 2025), https://peoplelab.hks.harvard.edu/wp-content/uploads/2025/04/IntersectionalPeerEffectsatWork-PolicyBrief.pdf. Those barriers can be particularly pronounced for Black women, whose experiences of discrimination may reflect the combined effects of race and sex. In 2024, 61% of Black women reported that their race or ethnicity resulted in loss of access to professional opportunities. LeanIn.Org & McKinsey & Co., *Women in the Workplace* 31 (2024), https://cdn-static.leanin.org/women-in-the-workplace/2024-pdf. The widespread effects of ongoing discrimination contribute to the problem of occupational segregation, in which Black workers are overrepresented in lower paying and higher risk industries. "Black workers are almost twice as likely to be in service-worker or laborer jobs, and almost 25 percent less likely to be in managerial or professional jobs" in the private sector. McKinsey & Co., *Race in the Workplace: The Black Experience in the US Private Sector* 21 (2021), https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Diversity%20and%20Inclusion/Race%20in%20the%20workplace%20The%20Black%20experience%20in%20the%20US%20private%20sector/Race-in-the-workplace-The-Black-experience-in-the-US-private-sector-v3.pdf. In 2025, 26.8% of Black women worked in service occupations, compared with 12.4% of white men. U.S. Bureau of

Lab. Stat., *Household Data Annual Averages: Employed People by Occupation, Race, Hispanic or Latino Ethnicity, and Sex* (Feb. 20, 2026), https://www.bls.gov/cps/cpsaat10.htm.

The persistent nature of workplace discrimination makes clear the importance of preserving meaningful, fair and even-handed access to Title VII's protections for all workers, including Black workers, workers of color, and workers with intersecting identities who face disproportionate rates of employment discrimination and harassment.

IV. Affirmance would inflict the most severe harm on Black transgender workers.

The district court's ruling is dangerously flawed and if affirmed, would produce immediate, devastating consequences for workers most vulnerable to workplace harassment and discrimination, including Black transgender workers who experience severe, disproportionate rates of workplace harassment at the intersection of their racial and gender identities.

Compared to their cisgender or non-Black colleagues, Black transgender workers face some of the highest rates of workplace discrimination related to other protected groups. In a 2023 national survey, 82% of transgender employees have reported experiencing discrimination or harassment at work and more than half have reported being fired (54%) or not being hired (53%) because of their sexual orientation or gender identity in comparison to their cisgender peers in comparable

situations. Brad Sears et al., *Workplace Experiences of Transgender Employees* 3 (Williams Inst. 2024), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Workplace-Discrimination-Nov-2024.pdf. 47% of transgender employees reported experiencing discrimination or harassment at work, at more than three times the rate of their LGBQ counterparts. *Id.* at 18. Further, among Black transgender respondents who experienced gender identity-based discrimination at work or while applying for a job in the past three years, 23% reported being unemployed. Press Release, Alberto Morales, *Ahead of Juneteenth, Human Rights Campaign Releases New Report Highlighting Prevalence and Impact of Discrimination on Black LGBTQ People*, Hum. Rts. Campaign, (June 17, 2021), https://www.hrc.org/press-releases/ahead-of-juneteenth-human-rights-campaign-releases-new-report-highlighting-prevalence-and-impact-of-discrimination-on-black-lgbtq-people. Researchers at the Centers for Disease Control and Prevention have also found that Black transgender women are "are more likely to attribute discrimination to racism," meaning that when in the role of a survey respondent responding to questions about anti-transgender bias, they are likely to under count the discrimination they face. Amy R. Baugher et al., *Prevalence of Discrimination and the Association Between Employment Discrimination and Health Care Access and Use — National HIV Behavioral Surveillance Among Transgender Women*,

Seven Urban Areas, United States, 2019–2020, 73 Morbidity & Mortality Wkly. Rep. 51, 57 (2024), https://www.cdc.gov/mmwr/volumes/73/su/pdfs/su7301a6-H.pdf.

Black LGBTQ+ workers, particularly Black transgender employees, face disproportionate workplace discrimination in comparison to their peers. A 2020 survey found that 40% of Black transgender adults experienced gender identity-based discrimination while applying for a job or at work in the preceding three years. Brad Sears et al., *Workplace Experiences of Black LGBTQ Employees* 7 (Williams Inst. 2025), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Black-Workplace-Feb-2025.pdf [hereinafter *Black LGBTQ Employees*] (citing Lindsay Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*, Ctr. for Am. Progress (July 13, 2021), https://www.americanprogress.org/article/black-lgbtq-individuals-experience-heightened-levels-discrimination/). In a 2023 survey, nearly one-third of Black LGBTQ+ respondents reported experiencing employment discrimination in the preceding five years, twice the rate of their white LGBTQ+ peers. *Black LGBTQ Employees* at 4, 25 (31% versus 15%). The data also show that Black LGBTQ+ workers were more than twice as likely to report being fired (21% versus 8%) or denied employment (22% versus 10%) based on their sexual orientation or gender identity. *Id.* at 26. As one respondent explained, "[i]t was because of my gender, my race, and . . . being LGBTQ" as to why they were explicitly discriminated against.

Id. at 23. These disparities underscore how intersecting forms of discrimination threaten Black LGBTQ+ workers' employment and economic security.

Despite the systemic nature of workplace discrimination faced by Black transgender workers, FreeState Justice alleges that the EEOC now processes a transgender worker's charge *only if* it challenges an employer's hiring, firing, or promotion decision, and "only then when those claims are brought in isolation, without accompanying harassment or retaliation claims." JA29. As a result, "mixed" charges, such as "race discrimination coupled with excluded charges like harassment tied to gender identity," are also excluded from processing. JA33. FreeState Justice further alleges that "the EEOC will not pursue legal action—and refuses to prosecute existing claims—if the charging party is transgender, regardless of whether the underlying claims depend on discrimination tied to gender identity or transgender status." JA29.

For example, in February 2025, citing Executive Order 14168 as its operative authority, the EEOC moved to dismiss one of its pending cases, *EEOC v. Reggio's Pizza, Inc.*, with prejudice. JA24; *see also Selina S. v. Driscoll*, EEOC App. No. 2025003976, at 3 (EEOC Feb. 26, 2026), https://www.eeoc.gov/sites/default/files/2026-02/2025003976.pdf (holding that "Title VII permits a federal agency employer to maintain single-sex bathrooms . . . [a]nd it permits a federal agency employer to exclude . . . trans-identifying

employees[] from opposite-sex facilities."). In this case, the EEOC sued on behalf of a Black transgender woman who alleged she was fired after complaining about "highly-offensive sex-based and race-based harassment." JA24 (citing *EEOC v. Reggio's Pizza, Inc.*, No. 1:24-cv-08910 (N.D. Ill. Sep. 25, 2024)). The EEOC alleged she "was harassed because she is a Black transgender woman and was terminated after she complained about that harassment." Order at 1, *EEOC v. Reggio's Pizza, Inc.*, No. 1:24-cv-08910 (N.D. Ill. Mar. 31, 2026), Dkt. No. 41. Abandoned by the agency, she was left to intervene and pursue these claims on her own. *See id.* at 2. More than a year later, the court granted her motion to intervene and dismissed the EEOC as plaintiff without prejudice. *Id.* at 1.

As illustrated by the EEOC's abandonment of its own case pursuant to Executive Order 14168 to align its enforcement with the Administration's binary definition of biological sex, the EEOC's Trans Exclusion Policy systematically and discriminatorily forecloses relief to transgender workers, including Black transgender workers who experience discrimination and harassment on the basis of multiple protected categories. By affirming the decision below, the Court would shield from judicial review the EEOC's enforcement policies which are clearly driven by discriminatory animus and deny Title VII's protection to some of the most vulnerable employees in the workplace who are often in need of the Agency's protections.

CONCLUSION

For the foregoing reasons, we urge this Court to protect the right of every worker, including Black transgender workers, to the full enforcement process Title VII guarantees by reversing the district court's dismissal and remanding for further proceedings.

October 30, 2026

Respectfully submitted,

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In accordance with Federal Rule of Appellate Procedure 32(g)(1), I certify that this brief:

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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