

STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT

JOSEPH KUILEMA,

Plaintiff-Appellant,

v

CALVIN UNIVERSITY,

Defendant-Appellee.

Sup Ct No. 168943

CoA No. 367310

Kent County Circuit Court  
Case No. 23-03561-CZ

---

Charissa C. Huang (P75501)  
Kevin J. Cowan (P85674)  
SMITH HAUGHEY RICE & ROEGGE  
***Attorneys for Plaintiff-Appellant***  
100 Monroe Center, NW  
Grand Rapids, MI 49503  
(616) 774-8000  
[chuang@shrr.com](mailto:chuang@shrr.com)  
[kcowan@shrr.com](mailto:kcowan@shrr.com)

Stephen J. van Stempvoort (P79828)  
Brett Swearingen (P85790)  
MILLER JOHNSON PLC  
***Attorneys for Defendant-Appellee***  
45 Ottawa Avenue, SW - Suite 1100  
Grand Rapids, Michigan 49503  
(616) 831-1765  
[vanstempvoorts@millerjohnson.com](mailto:vanstempvoorts@millerjohnson.com)  
[swearingenb@millerjohnson.com](mailto:swearingenb@millerjohnson.com)

Lori H. Windham (DC Bar 501838)  
Daniel L. Chen (DC Bar 1781783)  
Pro Hac Vice  
THE BECKET FUND FOR RELIGIOUS LIBERTY  
***Attorneys for Defendant-Appellee***  
1919 Pennsylvania Ave, NW – Suite 400  
Washington DC 20006  
(202) 955-0095  
[lwindham@becketlaw.org](mailto:lwindham@becketlaw.org)  
[dchen@becketlaw.org](mailto:dchen@becketlaw.org)

---

**Calvin University's Supplemental Brief**

**\*\*ORAL ARGUMENT REQUESTED\*\***

Table of Contents

	<u>Page</u>
Index of Authorities .....	iii
Counter-Statement of Jurisdiction .....	vi
Statement of Questions Presented.....	vii
Introduction .....	1
Statement of Facts.....	3
A. Calvin is founded by the Christian Reformed Church for the purpose of educating students in the liberal arts according to the Church’s doctrinal standards. ....	3
B. Mr. Kuilema begins teaching at Calvin and instructs his students in religious matters—but adopts a Biblical interpretation that is opposite to the interpretation adopted by the CRC and Calvin. ....	4
C. Mr. Kuilema is denied tenure in 2018.....	6
D. Mr. Kuilema fails to be reappointed after the PSC determines that he did not appropriately consult—and was not willing to appropriately consult—with university leadership. ....	7
E. The Board upholds the PSC’s decision. ....	12
F. Mr. Kuilema files suit, asserting two claims under ELCRA. ....	12
G. Calvin files a motion to dismiss.....	13
H. The trial court denies Calvin’s motion to dismiss.....	14
I. The Court of Appeals partially reverses the trial court.....	16
Argument .....	18
I. ELCRA provides a cause of action for sex-based associational discrimination only when an employer treats the plaintiff differently because of their sex.....	18

Table of Contents  
(continued)

	<u>Page</u>
A. Associational discrimination claims are predicated on the fact that the plaintiff’s own protected characteristic makes a difference to their treatment.....	18
B. <i>Rouch World</i> implicitly held that ELCRA permits associational discrimination claims on the basis of sex just like <i>Bryant</i> held that ELCRA permits associational discrimination claims on the basis of race. ....	21
C. <i>Miller</i> —which is a retaliation case—does not change the scope of disparate-treatment claims under ELCRA. ....	23
D. The plain language of MCL 37.2202(1)(a) requires the plaintiff’s protected characteristic to make a difference to her treatment.....	27
E. Many jurisdictions have rejected Mr. Kuilema’s theory— for good reason.....	29
F. Mr. Kuilema’s new reliance on Section 701 of ELCRA is misplaced. ....	33
II. Mr. Kuilema has failed to state a claim for associational discrimination on the basis of sex. ....	35
A. Mr. Kuilema was not discriminated against because of sex. ....	35
B. On the allegations of the complaint, Mr. Kuilema’s claim is barred by the First Amendment’s religious autonomy doctrine. ....	35
Conclusion.....	38
Certificate of Compliance .....	40

Index of Authorities

	<u>Page(s)</u>
<b>Cases</b>	
<i>Baer v Montachusett Reg'l Tech Sch Dist</i> , 380 F Supp 3d 143 (D Mass, 2019) .....	29
<i>Billard v Charlotte Cath High Sch</i> , 101 F4th 316 (CA 4, 2024) .....	16
<i>Bostock v Clayton Cnty</i> , 590 US 644 (2020) .....	18, 20, 21, 22, 28
<i>Bryant v Automobile Data Processing, Inc</i> , 151 Mich App 424; 390 NW2d 732 (1986) .....	1, 17, 19, 21, 23
<i>Burlington N &amp; Santa Fe Ry Co v White</i> , 548 US 53 (2006) .....	26
<i>Drake v 3M</i> , 134 F3d 878 (CA 7, 1998) .....	19
<i>El-Khalil v Oakwood Healthcare, Inc</i> , 504 Mich 152; 934 NW2d 665 (2019) .....	3
<i>Frith v Whole Foods Mkt, Inc</i> , 38 F4th 263 (CA 1, 2022) .....	20, 29, 32
<i>Graham v Ford</i> , 237 Mich App 670; 604 NW2d 713 (1999) .....	17, 20
<i>Haynie v State</i> , 468 Mich 302; 664 NW2d 129 (2003) .....	24
<i>Hecht v Nat'l Heritage Academies, Inc</i> , 499 Mich 586; 886 NW2d 135 (2016) .....	24
<i>Holcomb v Iona College</i> , 521 F3d 130 (CA 2, 2008) .....	20
<i>Hosanna-Tabor v EEOC</i> , 565 US 171 (2012) .....	16
<i>Joseph v Bd of Regents of the Univ Sys of Georgia</i> , 121 F4th 855 (CA 11, 2024) .....	20, 29
<i>Macedono-Bulgarian Orthodox Church v Macedonian Patriotic Org</i> , 27 Mich App 713; 184 NW2d 233 (1970) .....	36

Index of Authorities  
(continued)

	<u>Page(s)</u>
<i>Miller v CA Muer Corp</i> , 420 Mich 355; 362 NW2d 650 (1984) .....	19
<i>Miller v Dep't of Corrections</i> , 513 Mich 125 (2024) .....	2, 23, 24, 25, 26, 27, 32, 35
<i>Parr v Woodmen of the World Life Ins Co</i> , 791 F2d 888 (CA 11, 1986) .....	19
<i>Radtke v Everett</i> , 442 Mich 368; 501 NW2d 155 (1993) .....	34
<i>Ronen v RedRoute, Inc</i> , 763 F Supp 3d 319 (EDNY, 2025) .....	29
<i>Rouch World v MDCR</i> , 510 Mich 398; 987 NW2d 501 (2022) .....	1, 17, 18, 21, 22, 23, 24, 27, 28, 29, 35
<i>Starkey v Roman Cath Archdiocese of Indianapolis</i> , 41 F4th 931 (CA 7, 2022) .....	16
<i>Tetro v Elliott Popham Pontiac, Oldsmobile, Buick, &amp; GMC Trucks, Inc</i> , 173 F3d 988 (CA 6, 1999) .....	20
<i>Thomas v Marshall Pub Schs</i> , 750 F Supp 3d 986 (D Minn, 2024) .....	23
<i>Thompson v North American Stainless</i> , 562 US 170 (2011) .....	26, 33
<i>Union Gospel Mission of Yakima WA v Brown</i> , 162 F4th 1190 (CA 9, 2026) .....	36, 38
<i>Wax v Trs of Univ of Pennsylvania</i> , 799 F Supp 3d 422 (ED Pa, 2025) .....	32
<i>Whitfield v Trade Show Servs, Ltd</i> , No. 2:10-CV-00905-LRH, 2012 WL 693569 (D Nev, Mar. 1, 2012) .....	30
<i>Whitney v Seventh Day Adventists</i> , 401 F Supp 1363 (SDNY 1975) .....	18, 19

Index of Authorities  
(continued)

	<u>Page(s)</u>
<i>Zarda v Altitude Express, Inc.</i> , 883 F3d 100 (CA 2, 2018).....	22
 <b>Statutes</b>	
MCL 37.2202.....	2, 18, 19, 25, 26, 27, 28, 29, 33, 35
MCL 37.2701.....	2, 24, 25, 26, 33, 34
MCL 37.2801.....	24, 25, 26
 <b>Other Authorities</b>	
<i>Homosexuality and the Calvin College Community</i> (2012), <a href="https://calvin.edu/sites/default/files/migrated/offices-services-provost-files-homosexuality-and-the-calvin-community.pdf">https://calvin.edu/sites/default/files/migrated/offices-services-provost-files-homosexuality-and-the-calvin-community.pdf</a> .....	10, 11, 34
MCR 2.113(C).....	3
MCR 2.116(C)(8) .....	3, 13

**Counter-Statement of Jurisdiction**

Appellee does not dispute Plaintiff's statement of jurisdiction on appeal.

**Statement of Questions Presented**

- I. Whether the Elliott-Larsen Civil Rights Act, MCL 37.201 *et seq.*, provides a cause of action for sex-based associational discrimination, cf. *Miller v Dep't of Corrections*, 513 Mich 125 (2024)?

Appellant Kuilema answers: Yes.

Appellee Calvin University answers: Not under *Miller*.

The trial court answered: Yes.

The Court of Appeals answered: No.

- II. If so, whether the plaintiff adequately pled such a claim?

Appellant Kuilema answers: Yes.

Appellee Calvin University answers: No.

The trial court answered: Yes.

The Court of Appeals answered: No.

## Introduction

ELCRA allows plaintiffs to assert claims for “associational discrimination”—but only when the plaintiff’s own protected characteristic (race, sex, etc.) made a difference to the plaintiff’s treatment. That is what courts mean when they say that someone is asserting a viable claim for “associational discrimination.” They do not mean that plaintiffs can assert claims for sex discrimination when their own sex makes no difference to how they have been treated. This Court has always held that a disparate treatment claim requires proof that the plaintiff was treated differently because of her own protected characteristics, and many other courts have explained the difference between the two kinds of “associational discrimination” claims. One type of “associational discrimination” claim is viable; the other is not.

Deciphering between the two types of claims can sometimes be confusing. On one hand, it is clear that ELCRA permits discrimination claims where employers discriminate against an employee who has entered into an interracial or same-sex marriage. Although at first glance it might look like the plaintiffs in those cases are asserting claims on the basis of their spouse’s race or sex (and not their own), that is incorrect. The plaintiff in *Bryant*, for example, was discriminated against on the basis of her own race: her employer discriminated against her for marrying a black man because she was white and not black. *Rouch World*, too, was the same type of “associational discrimination” case: the company discriminated against the complainant for marrying a woman because the complainant was herself a woman and not a man. Thus, although Mr. Kuilema points to several “associational

discrimination” cases, his reliance on them is mistaken. None of them support his much different claim.

In response to this Court’s briefing order, Mr. Kuilema now tries a new argument, asserting for the first time that *Miller v Department of Corrections* supports his position. But that argument is mistaken, too.

*Miller* explained that a plaintiff may file a retaliation claim if the plaintiff has suffered damages when an employer illegally retaliates against someone else who engaged in protected conduct under MCL 37.2701(a) by intentionally harming the plaintiff. That analysis does not graft easily onto a disparate-treatment claim. Even if it were theoretically possible for a plaintiff to suffer damages as a result of an employer’s “discriminat[ion] against an individual with respect to employment . . . because of . . . sex” when the plaintiff is not the same individual who suffered the discrimination, it is hard to conceive of such a scenario. MCL 37.2202(1)(a). If an employer illegally terminates someone, for example, it is not clear how that person’s friends (who may never have been fired or may never have even worked for the employer) would be able to file disparate-treatment claims.

But in any event, Mr. Kuilema never alleges such a claim here: he alleges only that *he himself* was discriminated against “with respect to employment,” not that anyone else was. He never alleges that he suffered damages because Calvin discriminated against someone else “with respect to employment.” The Calvin employee whose wedding he officiated, for example, was never disciplined or terminated. *Miller* therefore makes no difference to Mr. Kuilema’s claim.

Beyond all of those hurdles, Mr. Kuilema’s complaint pleads directly into the First Amendment. He asserts that Calvin declined to renew his teaching contract because of Calvin’s religious beliefs—which is precisely what the First Amendment allows it to do. Either way, therefore, Mr. Kuilema has failed to state a viable claim. The Court of Appeals’ judgment should be affirmed.

### **Statement of Facts**

Calvin treats all facts alleged in the complaint as true, as is required for purposes of its motion under MCR 2.116(C)(8). See *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159-60; 934 NW2d 665 (2019). Calvin’s statement of facts also relies on the documents attached to the complaint. See *id.* at 163 (“[T]he trial court could properly consider the e-mails [attached to the complaint] under MCR 2.116(C)(8) because they were part of the pleadings. MCR 2.113(C).”).

**A. Calvin is founded by the Christian Reformed Church for the purpose of educating students in the liberal arts according to the Church’s doctrinal standards.**

Calvin was founded by the Christian Reformed Church (“CRC”) to “provide students courses in the liberal arts ... which are of a positively Reformed character entirely in accord with the doctrinal standards of the [CRC].” (App. 4a (Compl. ¶ 10)) (quoting Calvin’s Articles of Incorporation). Calvin’s purpose is to expose students to “to a variety of disciplines, all from a distinctly Reformed perspective.” (App. 4a (Compl. ¶ 11)).

As the denominational school of the CRC, Calvin is uniquely tied to the CRC. Every member of Calvin’s board of trustees is appointed by the governing body of the CRC, which is known as “Synod.” (App. 26a (Compl. Exhibit 1, Art. VII)). Calvin’s

Articles of Incorporation also may not be amended without Synod’s approval. (App. 26a (Compl. Exhibit 1, Art. VI)).

Because Calvin must be operated in a manner that is consistent with the CRC’s doctrinal standards, Calvin requires professors to affirm the scriptures, creeds, and confessions of the Church. As the complaint alleges, a religious teaching that has confessional status “binds . . . professors at denominational schools, like Calvin” and requires those teachings “to be upheld by professors . . .” (App. 16a (Compl. ¶¶ 106-107)). Calvin also requires the integration of faith with scholarship, teaching, and other aspects of faculty work and has developed resources for its professors to guide circumstances in which they disagree with the CRC’s stated position on a particular religious or theological topic. (App. 6a, 9a, 33a). Calvin’s religious convictions direct not only its positions on certain issues but how members of its community must address disagreements over those issues. Among other things, and in keeping with those religious convictions, Calvin requires an “appropriate tone and strategy” on such occasions—“a strategy that begins by consulting with those in authority, and a tone of humility that cares enough about the confessions to raise difficult issues and, at the same time, is willing to submit to the judgment of the church.” (App. 33a (Compl. Exhibit 2, at 2)).

**B. Mr. Kuilema begins teaching at Calvin and instructs his students in religious matters—but adopts a Biblical interpretation that is opposite to the interpretation adopted by the CRC and Calvin.**

In 2008, Mr. Kuilema began teaching as a social work professor at Calvin. As a professor, Mr. Kuilema’s responsibilities included “teaching courses from a

Reformed Christian perspective[.]” (App. 5a (Compl. ¶ 17)). As noted in the materials attached to the complaint, Mr. Kuilema stated that the religious creeds and confessions of the Reformed tradition “guide [his] work and life.” (App. 42a (Compl. Exhibit 5, at 2)). His colleagues observed that “Joe is relentless in his integration of faith and his profession in every way” and that “[h]is defense of his views is always expressed in terms of his serious and heartfelt commitment to Reformed theology.” (App. 42a-43a (Compl. Exhibit 5, at 2-3)). His students, likewise, “emphasize how consistently faith is embedded in his classes, remarking for example, that ‘Christian themes were intertwined with every topic that was discussed’ and ‘He has a justice-oriented Christian perspective that we need more of.’” (App. 43a (Compl. Exhibit 5, at 3)). “In one instance, a student was brought back to the faith while taking a class with him.” (App. 43a (Compl. Exhibit 5, at 3)).

According to his complaint, Mr. Kuilema also “addressed the CRC’s perspective on certain issues” in his position at Calvin. (App. 6a (Compl. ¶ 29)). Although the complaint alleges that he “did not *teach* the CRC’s perspective in a way which furthered its influence on students,” it nevertheless admits that Mr. Kuilema taught about the CRC’s perspective on various issues. (App. 6a (Compl. ¶ 29)).

In several respects, in fact, Mr. Kuilema actively opposed the doctrine of the CRC and Calvin. For instance, he “adamantly voiced his opinions in opposition to the CRC’s position on same-sex marriage.” (App. 10a (Compl. ¶ 54)). Mr. Kuilema was “bluntly honest and vocal” with students and faculty when “he disagreed with the CRC’s position, particularly in regard to its positions regarding LGBTQ+ persons.”

(App. 6a (Compl. ¶ 29)). Indeed, Mr. Kuilema “routinely and openly expressed concerns about Calvin’s treatment of and toward LGBTQ+ persons,” and also drafted an article in the student newspaper that “was an unequivocal denouncement of [the CRC’s], and inherently Calvin’s, practiced treatment of persons belonging to and associated with the LGBTQ+ community.” (App. 7a (Compl. ¶¶ 30-31)).

When Mr. Kuilema was preparing his application for tenure in 2017, he made sure that Calvin’s administration was aware of his concerns “about Calvin’s treatment of and toward LGBTQ+ individuals,” “his public support for LGBTQ+ individuals,” and his “longstanding and continued advocacy, support, advisement, and mentorship of members of the LGBTQ+ community.” (App. 8a-9a (Compl. ¶¶ 39-40, 52)).

Despite Mr. Kuilema’s “longstanding and continued” advocacy for and association with LGBTQ+ individuals while at Calvin, his complaint does not allege that Calvin ever disciplined him for this conduct, even when his advocacy was at odds with the CRC’s position. Calvin required, however, that any disagreements with Calvin’s theological views be expressed through established ecclesiastical channels in a constructive, charitable tone. (App. 9a (Compl. ¶ 50); App. 33a (Compl. Exhibit 2, at 2)).

### **C. Mr. Kuilema is denied tenure in 2018.**

In 2017, Mr. Kuilema applied for tenure, but his application was denied by Calvin’s Board of Trustees the following spring. (App. 8a (Compl. ¶ 46)). As explained in the Board’s letter communicating its decision, the Board determined that its decision was due to Mr. Kuilema’s “communication tone and strategy,” cataloguing a

list of incidents that made the Board hesitant about approving tenure. (App. 33a (Compl. Exhibit 2, at 2)). The Board informed Mr. Kuilema that it needed more evidence that he would work “within college policies and procedures in the manner expected of faculty members” as well as more evidence that Mr. Kuilema’s communications would “serve to strengthen the college and the broader Christian community in constructive and transparent ways.” (App. 34a (Compl. Exhibit 2, at 3)).

Instead of granting tenure, Calvin reappointed Mr. Kuilema to a two-year term. (App. 11a (Compl. ¶ 64)). According to the complaint, the Board’s determination “was based on the CRC’s interpretation of scripture” regarding same-sex relationships. (App. 9a (Compl. ¶ 49)).

**D. Mr. Kuilema fails to be reappointed after the PSC determines that he did not appropriately consult—and was not willing to appropriately consult—with university leadership.**

In October 2021, Mr. Kuilema officiated a wedding of two individuals who both identified as female at the time of the wedding. (App. 11a-12a (Compl. ¶¶ 66, 72)). One of the individuals was a Calvin employee at the time of the wedding. (App. 11a (Compl. ¶ 67)).

Before officiating the wedding, Mr. Kuilema consulted with the pastor of his local church, the leadership of his local church congregation, and the chair of Calvin’s Department of Sociology and Social Work. (App. 11a (Compl. ¶ 69)). Despite being previously instructed to consult with university administration regarding his disagreements with the CRC’s position, Mr. Kuilema did not consult with Calvin’s

dean, provost, or president about his decision to officiate the wedding. (App. 15a (Compl. ¶ 95)).

Nor did Mr. Kuilema inform Calvin's administration that he had officiated the wedding. Calvin's administration did not learn about Mr. Kuilema's conduct until almost two months later, when, in December 2021, Calvin's provost, Noah Toly, learned that Mr. Kuilema may have officiated the wedding. (App. 12a (Compl. ¶ 73)).

Provost Toly asked Mr. Kuilema to explain the context for his decision, which Mr. Toly observed was "contrary to the official position of the university and the Christian Reformed Church." (App. 37a (Compl. Exhibit 3, at 2)). Mr. Toly also informed Calvin's Professional Status Committee ("PSC") about Mr. Kuilema's actions in order to aid them in their decision about whether Mr. Kuilema should be reappointed to another two-year term of employment. (App. 12a, 36a (Compl. ¶ 76 & Exhibit 3)).

Mr. Kuilema has alleged that his "decision to officiate a civil marriage ceremony was not contrary to the official position of the CRC," that at the time "Calvin did not have an official position on civil marriage, but only sexual relations," that he "had officiated the wedding in accordance with Calvin policies, the CRC doctrine, and his Christian Reformed Church's approval," that "Calvin incorrectly believed that officiating the wedding was contrary to the CRC's position"—and at the end of the day "terminated Kuilema for [its] mistaken belief." (App. 14a-16a (Compl. ¶¶ 88-89, 93, 100)). According to the complaint, at the time Mr. Kuilema officiated

the wedding, some “CRC ministers [had] officiated religious same-sex marriages without losing their credentials.” (App. 16a (Compl. ¶ 104)).

Meanwhile, Mr. Kuilema also held a religious office as an elder at Sherman Street Church, which was at the time part of the Christian Reformed denomination. (App. 41a-42a (Compl. Exhibit 5 at 1-2)). Because the determinations surrounding his appointment fell “into the overlapping space between the Church and the University,” Calvin consulted with the “Sherman Street Church leadership and the Executive Committee of Classis Grand Rapids East,” a larger community of CRC congregations, concerning Mr. Kuilema’s status. (App. 41a-42a (Compl. Exhibit 5 at 1)).

Mr. Kuilema confirmed that he officiated the wedding and provided an explanation for doing so. (App. 41a (Compl. Exhibit 5, at 1)). The PSC reviewed “relevant Synodical documents” and obtained input from the leadership of Mr. Kuilema’s local church, as well as the denomination. (App. 41a (Compl. Exhibit 5, at 1)). The Dean of Calvin’s School of Humanities, Arts, and Social Sciences expressed concern over Mr. Kuilema’s failure to consult with his dean, the provost, or the president before engaging in activity that contradicted the CRC’s stated policies and positions. (App. 42a (Compl. Exhibit 5, at 2)). Of particular concern was Mr. Kuilema’s admission that, even if the Dean had counseled him not to officiate the wedding, “he would have done it anyway” because he felt that the request to officiate was “a test from God and that as a matter of personal integrity he had to accept.” (App. 44a (Compl. Exhibit 5, at 4)).

The PSC ultimately concluded in early 2022 that Mr. Kuilema’s conduct did not meet “the high standard for consultation set for all faculty, or those communicated specifically to him by the Board and Provost Brandsen in 2018.” (App. 47a (Compl. Exhibit 6)). As the PSC explained, it “was troubled by Prof. Kuilema’s lack of transparency with the university” before deciding to officiate the wedding. (App. 47a (Compl. Exhibit 6)). The PSC believed that “such a decision should have been made with more forthright communication and consultation with Calvin administrative leadership, including Prof. Kuilema’s Dean and Provost.” (App. 47a (Compl. Exhibit 6)). The PSC was also “troubled by a lack of adherence to the commitments Prof. Kuilema made as a Calvin faculty member to live within institutional guidelines, noting that many other faculty who would like to see institutional and denomination[al] change around LGBTQ+ affirmation shape their advocacy within the bounds of these expectations and guidelines.” (App. 47a (Compl. Exhibit 6)). While the PSC “collectively wrestled” with the many aspects of its decision that members viewed as “open to discussion and debate,” the committee ultimately recommended against reappointment for the fall of 2022. (App. 44a-45a (Compl. Exhibit 5, at 4-5); App. 15a (Compl. ¶ 94), App. 47a (Compl. Exhibit 6)).

Calvin’s decisions in 2018 and early 2022 relied in part on a 73-page document, *Homosexuality and the Calvin College Community*, published with the Board’s approval in 2012 “to guide the college community in examining issues related to homosexuality.” (App. 32a (Compl. Exhibit 2); App. 37a (Compl. Exhibit 3); App. 41a

(Compl. Exhibit 5); App. 47a (Compl. Exhibit 6)).<sup>1</sup> The 2012 document affirms Calvin’s “common confessional commitments” that “[t]he image of God is in all people, including same-sex attracted people,” that “[t]he church is called to accept, love, and encourage homosexual persons as part of the Christian community, supporting them (along with all church members) in practicing holiness in all of life,” and encourages faculty to engage LGBTQ+ students “in a mentoring relationship or in a pastoral mode,” “to listen to and support the students, encouraging them to grow in relationship to God and others, and to pursue honest self-understanding” so as “to make this campus a place of safety, healing, and encouragement.”<sup>2</sup> In its conclusion, the document expressed hope that the Calvin community “can come to a better understanding of what it means to obey the Lord’s command to love one another”—especially “those who have felt excluded or devalued in the past”—so that Calvin “will be granted the wisdom to welcome and encourage all members of the community in a spirit of Christ-like compassion and Spirit-guided obedience.”<sup>3</sup>

None of the documentation of Calvin’s decision to terminate Mr. Kuilema (all attached to the complaint) expresses any objection to his “longstanding and continued” association with LGBTQ+ individuals. (App. 15a-16a, 35a-47a (Compl. ¶¶ 98-100, Exhibits 3-6); App. 9a (Compl. ¶ 52)). Instead, Mr. Kuilema’s PSC dossier summary noted approvingly that “Prof. Kuilema goes out of his way to be a welcoming presence to students who are marginalized; students describe him as a safe and

---

<sup>1</sup> See page 5 at <https://calvin.edu/sites/default/files/migrated/offices-services-provost-files-homosexuality-and-the-calvin-community.pdf>.

<sup>2</sup> *Id.* at 15-16, 20.

<sup>3</sup> *Id.* at 58.

welcoming presence on campus. He exceeds expectations in this area [Service].” (App. 43a (Compl. Exhibit 5, at 3)).

**E. The Board upholds the PSC’s decision.**

Mr. Kuilema appealed the PSC’s decision in April 2022, but Calvin’s Board of Trustees denied the appeal. (App. 15a (Compl. ¶ 96)). Mr. Kuilema’s employment with Calvin ended in August 2022. (App. 39a (Compl. Exhibit 4)).

Meanwhile, the governing body of the CRC, Synod, determined during the summer of 2022 that the CRC’s views on same-sex relationships are an official interpretation of historic Christian beliefs and have “confessional status” within the denomination. (App. 16a (Compl. ¶ 105)). As the complaint alleges, a religious teaching that has confessional status “binds . . . professors at denominational schools, like Calvin” and requires those teachings “to be upheld by professors at denominational schools.” (App. 16a (Compl. ¶¶ 106-107)). Mr. Kuilema’s complaint, however, asserts that Calvin was incorrect about the CRC’s governing religious beliefs: “Kuilema’s decision to officiate the wedding was not even contrary to Synod’s after-the-fact decision.” (App. 17a (Compl. ¶ 112)).

**F. Mr. Kuilema files suit, asserting two claims under ELCRA.**

Mr. Kuilema (now on faculty at Grand Valley State University) subsequently filed this lawsuit. His complaint asserted two claims under ELCRA: (1) a claim for “associational discrimination,” and (2) a claim for retaliation. (App. 18a-22a (Compl. ¶¶ 115-148)).

Mr. Kuilema’s associational discrimination claim alleged that his contract was non-renewed because of his association with LGBTQ+ individuals, particularly

including his decision to officiate the LGBTQ+ wedding. (App. 18a-19a (Compl. ¶¶ 120-123)). According to Mr. Kuilema, Calvin non-renewed his contract because Mr. Kuilema's decision to officiate an LGBTQ+ wedding "was contrary to the CRC's position regarding same sex relationships." (App. 16a). The complaint also asserted that Mr. Kuilema's decision to officiate the wedding was not actually contrary to CRC doctrine and that Calvin was "mistaken" for believing that Mr. Kuilema's conduct fell outside the bounds of the CRC's religious position. (Compl. ¶¶ 88, 93, 99, 113). Mr. Kuilema also alleged that he actively opposed the CRC's religious beliefs regarding same-sex marriage, including when he taught his students. (App. 6a, 7a, 10a (Compl. ¶¶ 29, 31, 54)).

Mr. Kuilema's retaliation claim asserted that he opposed two allegedly unlawful employment practices at Calvin: (1) the decision of several other faculty members to show a particular documentary, *How Jack Became Black*, as part of the curriculum for a class; and (2) Calvin's decision to ask the coworker who participated in the LGBTQ+ wedding whether the wedding had occurred. (App. 20a-21a (Compl. ¶¶ 131-143)).

**G. Calvin files a motion to dismiss.**

In lieu of an answer, Calvin filed a motion to dismiss under MCR 2.116(C)(8). (App. 93a). Calvin argued that Mr. Kuilema's "associational discrimination" claim failed as a matter of law, because a plaintiff alleging a sex-discrimination claim under ELCRA must allege that his or her own sex made a difference to the alleged discrimination that he or she suffered. (App. 108a-113a). Calvin also asserted that Mr. Kuilema's retaliation claim failed as a matter of law because neither of the

incidents that he allegedly opposed could objectively be viewed as unlawful discrimination. (App. 113a-117a).

Calvin also pointed out that, on the basis of the complaint's own allegations, the dispute between Mr. Kuilema and Calvin is at bottom a theological dispute between a Christian university and a member of its faith community who has specifically alleged that he intends to teach the opposite of what the faith community believes. Because a faith community is entitled under the First Amendment to part ways with an individual—especially a teacher—who steps outside the boundaries of its faith, Calvin argued that Mr. Kuilema's claims were barred under the First Amendment's church autonomy doctrine. (App. 123a-125a). (Calvin also asserted that Mr. Kuilema's claims were barred by the ministerial exception, but those arguments are not at issue for purposes of this appeal. (App. 118a-123a).)

#### **H. The trial court denies Calvin's motion to dismiss.**

At the hearing on Calvin's motion, counsel for Mr. Kuilema conceded that his claim for associational discrimination was “[n]ot based on the plaintiff's own sex.” (App. 418a). Instead, Mr. Kuilema was asserting a claim based on the alleged “animus that was directed toward [another] employee because of that other employee's sex.” (App. 421a). Mr. Kuilema nevertheless argued that ELCRA prohibits discrimination “because of sex, that enumerated category broadly and with no expressed limitation on whose sex that is.” (App. 419a). According to Mr. Kuilema, “ELCRA does not specifically indicate that it must be the individual bringing the claim who belongs to the protected class in order to give rise to a claim.” (App. 419a).

Ultimately, the trial court denied Calvin's motion to dismiss. With respect to Count One, the trial court acknowledged that "obviously [Mr. Kuilema is] not saying that he's being discriminated against because he's a man. So it's not because of his sex that he's alleging any . . . discrimination." (App. 399a). The court observed, "Clearly the plaintiff was not and does not claim to have been discriminated [against] because he's a man. And I do agree with the defendant that were he a woman, he would have potentially probably been treated the same way." (App. 430a).

Instead, as the trial court explained, Mr. Kuilema was alleging discrimination based on other individuals' sex; namely, "the sex of the individuals that he officiated the wedding for." (App. 400a). The trial court ruled that this was sufficient for Mr. Kuilema to state a discrimination claim under ELCRA. (App. 430a).

With respect to the retaliation claim, the trial court denied summary disposition under the belief that Mr. Kuilema asserted that "he was retaliated against because of his association with this particular class of people." (App. 431a). As indicated above, however, that was not the basis of Mr. Kuilema's retaliation claim. The trial court also ruled that Mr. Kuilema asserted a claim for being retaliated against "because of his viewpoints and statements that potentially . . . also have to do with the film that he was talking about." (App. 431a).

Finally, the trial court ruled that the church autonomy doctrine did not apply. According to the trial court, Mr. Kuilema's claims required a factfinder to determine whether Mr. Kuilema's contract was non-renewed "because of his affiliation or his association with the people with which he was associated" or instead "because of a

general disagreement with . . . the University’s position or religious positions, or religious views.” (App. 432a). Although the trial court acknowledged that this distinction “may be kind of . . . a gray area or a little tight rope to walk,” the court ruled that Mr. Kuilema had stated a claim. (App. 432a).

The trial court also ruled that it was premature to assess whether the ministerial exception applied without further factual development. That determination was incorrect. See, e.g., *Billard v Charlotte Cath High Sch*, 101 F4th 316, 332 (CA 4, 2024) (ministerial exception applied to English teacher who “was teaching through a faith-based lens”); *Starkey v Roman Cath Archdiocese of Indianapolis*, 41 F4th 931, 940, 945 (CA 7, 2022) (guidance counselor at Catholic high school was minister protected by First Amendment even though “[i]t is a stretch to call a high school guidance counselor a minister;” ministerial exception also bars state law claims, which cannot be used to deprive religious organization of “control over the selection of those who will personify its beliefs”) (quoting *Hosanna-Tabor v EEOC*, 565 US 171, 188 (2012)). Although Calvin is confident that the ministerial exception also bars Mr. Kuilema’s claims, that issue is not a subject of this application for leave to appeal.

The trial court entered an order reflecting its ruling on July 24, 2023. (App. 437a). Calvin timely filed an application for leave to appeal, which the Court of Appeals granted.

**I. The Court of Appeals partially reverses the trial court.**

On July 11, 2025, the Court of Appeals issued an unpublished decision affirming the trial court’s order in part and reversing in part. The Court of Appeals

affirmed the trial court's denial of the motion to dismiss Mr. Kuilema's retaliation claim, concluding that the complaint sufficiently "alleged that each element of a retaliatory discrimination claim occurred." (App. 442a).

By contrast, the Court of Appeals reversed the trial court's denial of the motion to dismiss the sex-discrimination claim. The court identified several reasons for doing so. First, the court relied on the plain language of the statute, observing that ELCRA contains "no language prohibiting discrimination against an individual because of *association* with other persons based upon the sex of the other persons." (App. 440a (emphasis in original)). Second, the court rejected Mr. Kuilema's argument that his claim was just like those in *Bryant v Automobile Data Processing, Inc*, 151 Mich App 424, 429-431; 390 NW2d 732 (1986), and *Graham v Ford*, 237 Mich App 670, 672; 604 NW2d 713 (1999), noting that in both cases "the race of the plaintiff was a key factor in the discrimination." (App. 441a). And third, the court reasoned that Mr. Kuilema's claim was precluded by *Rouch World*, which requires a sex-discrimination plaintiff to establish causation by showing that "the discriminatory action would not have occurred but for the sex of the complainant." *Rouch World v MDCR*, 510 Mich 398, 420; 987 NW2d 501 (2022). Because Mr. Kuilema's claims admitted that his sex made no difference to his treatment, the Court of Appeals dismissed his disparate-treatment claim. (App. 443a).

Mr. Kuilema subsequently filed his application for leave to appeal, which the Court granted, requesting briefing on (1) whether ELCRA provides a cause of action

for sex-based associational discrimination, and (2) if so, whether Mr. Kuilema adequately pleaded such a claim.

### Argument

**I. ELCRA provides a cause of action for sex-based associational discrimination only when an employer treats the plaintiff differently because of their sex.**

ELCRA prohibits employment discrimination when employers “discriminate against an individual . . . because of . . . sex.” MCL 37.2202(1)(a). That language is materially identical to the language that the U.S. Supreme Court examined in *Bostock* to conclude that Title VII prohibits employment discrimination on the basis of sexual orientation—analysis which this Court likewise adopted in its *Rouch World* decision. See *Bostock v Clayton Cnty*, 590 US 644, 656-659 (2020); *Rouch World*, 510 Mich at 413-416, 420-423 (“[W]e find that *Bostock* offers a straightforward analysis of the plain meaning of analogous statutory language and we agree with its reasoning.”).

As this Court has already held implicitly in *Rouch World*, ELCRA’s statutory language does permit sex-based associational discrimination claims—but not the type of claim that Mr. Kuilema seeks to advance, where he admits that his own sex was irrelevant to his treatment.

**A. Associational discrimination claims are predicated on the fact that the plaintiff’s own protected characteristic makes a difference to their treatment.**

The first case to adopt the associational discrimination theory was *Whitney v Seventh Day Adventists*, 401 F Supp 1363 (SDNY 1975), where a white woman in a relationship with a black man alleged unlawful discharge under Title VII. The court

held that “if Whitney was discharged because . . . the defendant disapproved of a social relationship between a white woman and a black man, *the plaintiff’s race was as much a factor in the decision to fire her as that of her friend,*” and her claim therefore “falls within the statutory language.” *Id.* at 1366 (emphasis added).

In 1986, both Michigan and federal appellate courts adopted the theory for the first time. In *Bryant v Automatic Data Processing*, 151 Mich App 424, 390 NW2d 732 (1986), the Court of Appeals observed that the “purpose of ELCRA is to prevent discrimination against persons *based on their membership in a certain class* and to ‘eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases.’” *Id.* at 430 (emphasis added) (quoting *Miller v CA Muer Corp*, 420 Mich 355, 362-363; 362 NW2d 650 (1984)). Addressing a plaintiff’s claim to have suffered employment discrimination because of her interracial marriage, the court held that

if an employer discriminates against a white (or black) employee because of the latter’s marriage to a black (or white) spouse, *the race of both the employee and the spouse is a motivating factor*. Thus, it must be concluded that the employee in such a case is discriminated against “because of race” [under MCL § 37.2202] ....

*Id.* (emphasis added).

Around the same time, finding the logic of the *Whitney* case “irrefutable,” the Eleventh Circuit became the first federal appeals court to recognize the theory of associational discrimination, holding that when a plaintiff “claims discrimination based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of *his* race.” *Parr v Woodmen of the World Life Ins Co*, 791 F2d 888, 892 (CA 11, 1986); see also *Drake v 3M*, 134 F3d 878, 884

(CA 7, 1998) (“[T]he key inquiries should be whether the employee has been discriminated against and whether that discrimination was ‘because of’ the employee’s race.”) (holding that white employee may sue for discrimination due to friendship with black co-workers). The Court of Appeals reaffirmed the same rationale for associational discrimination claims thirteen years later in *Graham*, a case involving interracial workplace association. See *Graham v Ford*, 237 Mich App 670, 677-678; 604 NW2d 713 (1999).

As these early associational discrimination cases all show, the theory stems from the recognition that the protected characteristic *of the plaintiff* necessarily made a difference to how the employer treated them.

And that is what every case since then has recognized, as well. Courts have repeatedly emphasized this facet of “associational discrimination” claims: “where an employee is subjected to adverse action because an employer disapproves of interracial association, the employee suffers discrimination because of the employee’s *own race*.” *Holcomb v Iona College*, 521 F3d 130, 139 (CA 2, 2008). “[A]lthough associational claims like the one in *Holcomb* appear quite different from the typical Title VII discrimination claim, such claims are fundamentally consistent with *Bostock* and Title VII’s plain language prohibiting action ‘because of such individual[ ]’ plaintiff’s race.” *Frith v Whole Foods Mkt, Inc*, 38 F4th 263, 272 (CA 1, 2022); see also *Joseph v Bd of Regents of the Univ Sys of Georgia*, 121 F4th 855, 870–71 (CA 11, 2024) (same); *Tetro v Elliott Popham Pontiac, Oldsmobile, Buick, & GMC Trucks, Inc*, 173 F3d 988, 994–95 (CA 6, 1999) (same).

**B. *Rouch World* implicitly held that ELCRA permits associational discrimination claims on the basis of sex just like *Bryant* held that ELCRA permits associational discrimination claims on the basis of race.**

ELCRA sex discrimination claims function the same way that ELCRA race discrimination claims do. That is, ELCRA permits “associational discrimination” claims on the basis of sex—but only where the plaintiff’s sex makes a difference in how the employer treats the plaintiff. Just as discriminating against a plaintiff because they have entered into an interracial marriage inherently discriminates on the basis of the *plaintiff’s* race, discriminating against a plaintiff because they have entered into a same-sex marriage discriminates on the basis of the *plaintiff’s* sex. See *Bryant*, 151 Mich App at 430.

Both *Rouch World* and *Bostock* rest on this recognition. The parties in *Bostock* made this point expressly. Mr. Bostock argued in his Supreme Court brief that “there is no principled reason” why the associational theory of discrimination behind interracial marriage cases—where the race of the plaintiff is relevant—“should not also apply to sex discrimination under Title VII.”<sup>4</sup> An amicus brief filed by several civil rights groups likewise argued that “[t]he same logic [as the interracial marriage cases] dictates treating sexual-orientation discrimination as discrimination on the basis of sex” because gays and lesbians “suffer discrimination based on a protected characteristic of the person they date or marry *in relation to their own protected characteristic*.” The brief argued that “in associational-discrimination cases, just as

---

<sup>4</sup> Brief for Petitioner (June 26, 2019) at 18-20, available at [www.supremecourt.gov/DocketPDF/17/17-1618/104212/20190626161040839\\_38089%20pdf%20Sutherland%20I%20-%20Brief%20to%20File.pdf](http://www.supremecourt.gov/DocketPDF/17/17-1618/104212/20190626161040839_38089%20pdf%20Sutherland%20I%20-%20Brief%20to%20File.pdf).

in other Title VII cases, the *ultimate legal inquiry* is straightforward”: namely, “whether ... the employee is being subjected to disparate treatment because of *his or her race, color, sex, national origin, or religion.*”<sup>5</sup> In short, “looking at the question from the perspective of associational discrimination, sexual orientation discrimination—which is motivated by an employer’s opposition to romantic association between particular sexes—is discrimination based on the employee’s own sex.” *Zarda v Altitude Express, Inc*, 883 F3d 100, 112–13 (CA 2, 2018).

*Bostock* adopted that reasoning: “[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Bostock*, 590 US at 660. That is why, “if changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.” *Id.* at 659–60. If not, then not. *Id.* at 656.

*Rouch World* came to the same conclusion for the same reasons. “The ELCRA’s prohibition of sex discrimination requires a determination whether a specific individual was treated worse than a member of the opposite sex would have been . . .” *Rouch World*, 510 Mich at 428. This Court’s ruling turned on the fact that the alleged discrimination would not have occurred “but for the sex of the complainant.” *Id.* at 420. The decision in *Rouch World*, in other words, is an example of a viable “associational discrimination” claim. The defendant there was treating the complainant (a woman) differently on the basis of her own sex, because it believed

---

<sup>5</sup> Amici Curiae Brief For Lawyers’ Committee For Civil Rights Under Law, The Leadership Conference On Civil And Human Rights, And 57 Civil Rights Organizations (July 3, 2019) at 31, 32-33, available at [www.supremecourt.gov/DocketPDF/17/17-1618/107051/20190703133435002\\_Lawyers%20Committee%20Brief.pdf](http://www.supremecourt.gov/DocketPDF/17/17-1618/107051/20190703133435002_Lawyers%20Committee%20Brief.pdf) (emphasis added).

that she—as a woman—should not be marrying another woman. If she had been a man instead, the defendant would have treated her differently. *Id.* at 424. That is precisely the same analysis that drives the result in all of the interracial marriage cases, including *Bryant*.

Mr. Kuilema, however, is advancing an argument that is fundamentally different. Mr. Kuilema asserts that he was subjected to associational discrimination even while conceding that his own sex made no difference to how he was treated. Rather than functioning as the pivotal inquiry at the root of an associational discrimination claim, his own protected status is irrelevant. When plaintiffs assert claims like these, they fail to state a viable claim for sex discrimination. See, e.g., *Thomas v Marshall Pub Schs*, 750 F Supp 3d 986, 995 (D Minn, 2024), *aff'd*, 152 F4th 884 (CA 8, 2025) (employee who supported LGBTQ+ youth “was discriminated against because of what she advocated, not because of her sex—because of what she said, not because of who she is”).

*Rouch World* recognizes associational discrimination claims on the basis of sex when plaintiffs are subjected to disparate treatment because of their sex. But that is not the type of claim that Mr. Kuilema has pleaded.

**C. *Miller*—which is a retaliation case—does not change the scope of disparate-treatment claims under ELCRA.**

The sea-change that Mr. Kuilema asks this Court to make with respect to disparate-treatment claims should not be underestimated. This Court has never accepted the theory that he proposes here. On the contrary, this Court has repeatedly held that “an employer cannot be said to have discriminated against an employee

‘because of sex unless, but for the fact of *the employee’s* sex, the employer would not have discriminated against the employee.’ *Haynie v State*, 468 Mich 302, 308–09; 664 NW2d 129 (2003) (emphasis added). As this Court has explained, “[t]he ultimate question in every employment discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination.” *Hecht v Nat’l Heritage Academies, Inc.*, 499 Mich 586, 606; 886 NW2d 135 (2016). Indeed, this feature of a disparate-treatment claim was the critical piece of reasoning in *Rouch World*, which held that a plaintiff states a sex-discrimination claim under ELCRA only if the alleged discrimination would not have occurred “but for the sex of the complainant.” *Rouch World*, 510 Mich at 420.

Despite Mr. Kuilema’s assertion, none of this precedent is altered by *Miller v Dep’t of Corrections*, 513 Mich 125; 15 NW3d 129 (2024). *Miller* interrogated whether ELCRA’s retaliation provisions permit a plaintiff to allege a claim for “third-party” retaliation. Specifically, MCL 37.2701(a) provides that no one may “[r]etaliat[e] or discriminate against a person because the person has opposed a violation of this act” or engaged in other specified protective activity. *Id.* And MCL 37.2801(1) provides that “[a] person alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both.” *Id.*

This Court held in *Miller* that these two statutes, combined, allow a plaintiff to “bring a civil action” under MCL 37.2801(1) whenever the plaintiff has “suffered damages as a result of” an employer’s impermissible retaliation against someone who engaged in protected conduct under MCL 37.2701(a). *Miller*, 513 Mich at 136. As a

matter of plain textual analysis, therefore, the plaintiffs in *Miller* stated a viable claim for retaliation when they alleged that (1) they had suffered damages as a result of (2) their employer’s illegal retaliation against two of their close friends and coworkers, who had engaged in conduct that was protected under MCL 37.2701(a). *Id.* at 136–37.

That statutory analysis does not support the broad “associational discrimination” theory that Mr. Kuilema advances here. ELCRA disparate treatment claims are governed by MCL 37.2202(1)(a), which prohibits an employer from “discriminat[ing] against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of [a protected characteristic, including sex].” MCL 37.2202(1)(a). Applying the same analysis that *Miller* adopted, a plaintiff may “bring a civil action” under MCL 37.2801(1) if the plaintiff has suffered damages as a result of an employer’s impermissible “discriminat[ion] against an individual with respect to employment . . . because of [a protected characteristic, including sex].” MCL 37.2202(1)(a).

That is not what Mr. Kuilema alleges here. Even if *Miller* theoretically allowed a plaintiff to sue if they have suffered damages due to someone else’s experience of *employment* discrimination, Mr. Kuilema does not allege that he suffered damages as a result of Calvin discriminating against any other person involved in the LGBTQ+ wedding “with respect to employment . . .” *Id.* The employee whose wedding Mr. Kuilema officiated was never terminated or disciplined by Calvin. Instead, Mr. Kuilema alleges only that Calvin discriminated against *him* with respect to *his*

employment. And he concedes that his protected characteristic—sex—did not factor into his treatment. His complaint—even under *Miller*—therefore fails to allege that he suffered damages as a result of allegedly illegal “discrimination against an individual with respect to employment . . . because of . . . sex.” *Id.*

Although Mr. Kuilema attempts to portray *Miller* as allowing for broad “associational discrimination” claims in any context, that argument disregards the relevant statutory provisions. Disparate-treatment provisions seek to “prevent injury to individuals based on who they are, *i.e.*, their status.” *Burlington N & Santa Fe Ry Co v White*, 548 US 53, 63 (2006) (construing Title VII). Retaliation provisions, on the other hand, seek to “prevent harm to individuals based on what they do, *i.e.*, their conduct.” *Id.*

As *Miller* recognized, one way in which an employer could attempt to harm an employee “based on what they do” is to fire all of that employee’s closest friends in retaliation for the employee’s protected conduct. See *Miller*, 513 Mich at 137; see also *Thompson v North American Stainless*, 562 US 170, 174 (2011). More importantly, however, that conclusion flows naturally from the statutory text. If an employer fires an employee’s friend after the employee engages in protected conduct, the employer is “retaliat[ing] . . . against” that employee “because [that] person has [engaged in protected activity],” even though the immediate harm is visited on the friend. MCL 37.2701(a). And the person who is harmed—the friend who is fired—may sue for damages due to that retaliation. See MCL 37.2801(1). Unlike Mr. Kuilema’s attempt to force the retaliation-rationale in *Miller* onto the disparate-treatment provisions in

MCL 37.2202(1)(a), the analysis in *Miller* does not require any departure from the statutory text; it fits comfortably within the plain meaning of “retaliation.”

Mr. Kuilema is therefore incorrect to argue that *Miller* can compensate for the core defect in his argument. Mr. Kuilema’s claim fails because the statutory requirement that a person be “discriminate[d] against . . . because of . . . sex” refers to the sex of the plaintiff, not the sex of third parties or the concept of “sex” in the abstract. MCL 37.2202(1)(a). *Miller* does not speak to that question. *Rouch World*, in adopting *Bostock*’s swap test, already has.

**D. This Court has repeatedly recognized that a disparate-treatment claim requires the plaintiff’s protected characteristic to make a difference to her treatment.**

Just as *Miller* does not provide Mr. Kuilema with a path around controlling precedent, neither does the statutory text. ELCRA’s disparate treatment provision prohibits an employer from “discriminat[ing] against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of [a protected characteristic, including sex].” MCL 37.2202(1)(a). Mr. Kuilema argues that the statute prohibits an employer from “discriminat[ing] against an individual” with respect to their employment “because of” a protected characteristic that has nothing to do with that individual, or potentially any individual. But this Court has already recognized that disparate treatment claims are focused on rooting out discrimination against individuals because of their own protected characteristics: “By using the term ‘individual’ rather than ‘group,’ the ELCRA penalizes discriminatory action as applied to individuals . . .” *Rouch World*, 510 Mich at 428.

The rest of MCL 37.2202(1) reinforces the point. Like subparagraph (a), the other three subparagraphs all clearly relate to employer actions based on an individual plaintiff's protected status. Subparagraph (b) concerns employer actions to "limit, segregate, or classify" employees or applicants in a way that "adversely affects the status of [the] employee or applicant" because of their protected status. MCL 37.2202(1)(b). Subparagraph (c) prohibits employers from "discriminat[ing] against a person on the basis of sex" with respect to "a benefit plan or system." MCL 37.2202(1)(c). And subparagraph (d) prevents employers from treating individuals "affected by pregnancy, childbirth, or a related medical condition differently ... from another individual who is not so affected but similar in ability or inability to work." MCL 37.2202(1)(d). In each of these instances, it is the protected status of the individual plaintiff, not a third party, that matters—just as is true for the core prohibition in subparagraph (a). When it enacted MCL 37.2202(1)(a), the Legislature protected employees or applicants who have been "discriminated against" on the basis of their protected characteristics, not someone else's.

The plain reading of MCL 37.2202(1)(a) is therefore exactly what this Court said it was in *Rouch World*, which is the same as what *Bostock* said about Title VII's disparate-treatment provision: a plaintiff states a sex-discrimination claim under ELCRA only if the alleged discrimination would not have occurred "but for the sex of the complainant." *Rouch World*, 510 Mich at 420.

**E. Many jurisdictions have rejected Mr. Kuilema’s theory—for good reason.**

Mr. Kuilema is not the first plaintiff who has advocated for recognition of the broad type of “associational discrimination” claim that he proposes here. As catalogued more thoroughly in Calvin’s previous briefs, many jurisdictions that have considered the issue have rejected plaintiffs’ attempts to assert disparate-treatment claims even when their own protected characteristics make no difference to their treatment. See, e.g., Calvin’s Opp. to App., at 24-29; Calvin’s Response to Amicus Br., at 2-3; *Joseph*, 121 F4th at 870–71; *Frith*, 38 F4th at 273; *Ronen v RedRoute, Inc*, 763 F Supp 3d 319, 326 (EDNY, 2025) (“Because Ronen is alleging that RedRoute discharged him because of his *wife’s* protected status, not his own, he has not alleged facts falling within Title VII’s prohibition . . .”); *Baer v Montachusett Reg’l Tech Sch Dist*, 380 F Supp 3d 143, 154 (D Mass, 2019) (“[I]n cases of associational discrimination, the plaintiff is discriminated against because of his or her own race.”).

As those cases demonstrate, there are very good reasons militating against accepting Mr. Kuilema’s request to drastically broaden the scope of ELCRA disparate-treatment claims. Mr. Kuilema’s position, after all, is that an employer violates ELCRA whenever it engages in an adverse action because of *anyone’s* sex, the plaintiff’s or someone else’s, or even sex as an abstract category. Pl.’s Supp. Br., at 6 (“the ‘sex’ ... need not be that individual’s *own* sex”). Disregarding *Rouch World’s* insistence on ELCRA’s focus on the individual, Mr. Kuilema asserts that MCL 37.2202(1)(a) “does not contain such a limitation on its protections, and this Court

should decline to read into the statute such an additional requirement that the statute does not contain.” Pl.’s Supp. Br. 6.

That interpretation would cause ELCRA to balloon in scope—capturing a wide variety of conduct that courts routinely find falls outside the scope of similar discrimination statutes. As just one example, plaintiffs might be able to assert ELCRA disparate-treatment claims if they are terminated because of their support for particular public figures, as long as that support is based on those figures’ protected characteristics. Although that hypothetical might at first seem far-fetched, compare the allegations in *Whitfield* to the allegations that Mr. Kuilema has made here: “Whitfield does not claim that he was terminated because he is an African–American; indeed, he admits this is not the case. Instead, Whitfield claims that he was terminated because he declared his support and voted for an African–American presidential candidate.” *Whitfield v Trade Show Servs, Ltd*, No. 2:10-CV-00905-LRH, 2012 WL 693569, at \*3 (D Nev, Mar. 1, 2012) (App. 496a). Switch race with sex, and there is no real daylight between Mr. Whitfield’s allegations and Mr. Kuilema’s.

Mr. Kuilema is advocating for an interpretation of ELCRA that is far broader than its statutory language allows and is far more sweeping than virtually any other jurisdiction has accepted. For one thing, to the extent that Mr. Kuilema asserts that a discrimination claim may be based on “sex” without any link to a particular individual’s sex, that interpretation would untether ELCRA discrimination claims from any necessary link to discriminatees at all. Plaintiffs would be able to bring disparate-treatment claims alleging adverse treatment because of any sex-related

views or behaviors, such as perspectives on marriage or feminism, membership or involvement in sex-segregated activities or groups, thoughts on or participation in dating and sex, support or opposition to the men’s rights movement, or even expressions of gendered perspectives on Taylor Swift.

For another, as Calvin’s previous briefs have pointed out (Calvin’s Opp. to App., at 27-28; Calvin’s Response to Amicus Br., at 3), the expansive statutory interpretation that Mr. Kuilema seeks would cut both ways. One can applaud or condemn hypothetical employer actions in these contemplated scenarios—as one example, imagine an employee alleging sex discrimination after being terminated for his enthusiastic online support of Andrew Tate—but it is difficult to find any support in the statutory text that such actions constitute unlawful discrimination.

Mr. Kuilema might reply that his theory includes the implicit limitation that the third party must be *associated* with the victim of the adverse action. But how close does an “associate” need to be in order to fall within the statutory protection? The statute itself gives no guidance. Would it suffice if Mr. Kuilema had merely attended the marriage ceremony instead of performed it? What if Mr. Kuilema had only expressed enthusiastic support for the wedding but did not attend it and did not personally know the participants? What if Mr. Kuilema only expressed support for a theological acceptance of LGBTQ+ weddings in general without encouraging any particular weddings or individuals in particular? Mr. Kuilema has no answers, and neither does ELCRA. And any attempt to draw bright lines on this issue would be an atextual intervention in the statute, which Mr. Kuilema has already argued is not

allowed: “[T]his Court should decline to read into the statute such an additional requirement that the statute does not contain.” Pl.’s Supp. Br., at 6.

Mr. Kuilema has no response to the significant overbreadth concerns that his position causes, either. One example is the risk to advocacy organizations who wish to retain the ability to disassociate from applicants or employees who hold views at odds with the organization’s mission, especially when those views have a nexus with a protected status. Mr. Kuilema’s theory could convert the lawful viewpoint discrimination in which advocacy groups routinely engage into impermissible associational discrimination.

The relative moral or ethical merits of these various positions is not the point. The point is, instead, that Mr. Kuilema’s broad and atextual theory of associational discrimination likely would catalyze a profound change in disparate-treatment law. Just as it would allow the plaintiffs in *Frith* to assert disparate-treatment claims for being terminated for wearing Black Lives Matter masks, it would allow the plaintiff in *Wax* to assert a disparate-treatment claim for being terminated for supporting white men and denigrating minorities. *Frith v Whole Foods Mkt, Inc*, 38 F4th 263, 273 (CA 1, 2022); *Wax v Trs of Univ of Pennsylvania*, 799 F Supp 3d 422, 430 (ED Pa, 2025).

These problems are of an entirely different magnitude than any fallout that might be occasioned by this Court’s recognition of third-party retaliation claims in *Miller*. That is because retaliation claims are always bounded by the necessary link to an employee’s protected activity. Without protected activity, there can be no

retaliation, third-party or otherwise. MCL 37.2701(a). Under Mr. Kuilema's view of disparate-treatment claims, however, plaintiffs could contend that they were harmed because of views on "sex" or "race" or "age" in the abstract, even if their own sex, race, or age admittedly had nothing to do with their treatment. Even if the line-drawing problems with third-party retaliation claims can at times be "difficult," *Thompson*, 562 US at 174, they would grow exponentially harder if Mr. Kuilema's unbounded theory were to become the law in the disparate-treatment context.

**F. Mr. Kuilema's new reliance on Section 701 of ELCRA is misplaced.**

Finally, for the first time in this case, Mr. Kuilema's supplemental brief asserts that MCL 37.2701(c) & (f) provide a cause of action for his associational discrimination claim. Pl.'s Supp. Br., at 5. Disparate-treatment claims are governed by MCL 37.2202, not MCL 37.2701. But in any event, Mr. Kuilema's resort to MCL 37.2701 does not suffice.

MCL 37.2701(c) allows claims against individuals who "[a]ttempt directly or indirectly to commit an act prohibited by this act." *Id.* MCL 37.2701(c) of course encompasses acts prohibited by MCL 37.2202, but it does not expand the breadth of MCL 37.2202 or otherwise add to it. The same problem arises with Mr. Kuilema's observation that MCL 37.2701(c) also encompasses "*indirect attempted* commissions of prohibited employment discrimination." Pl.'s Supp. Br., at 6. The scope of "prohibited employment discrimination" remains governed by MCL 37.2202. And in any event, Mr. Kuilema has not claimed that Calvin *attempted* to commit employment discrimination against him, but that it did so full stop.

MCL 37.2701(f) does not advance Mr. Kuilema’s argument, either. Under MCL 37.2701(f), plaintiffs may sue individuals who “[c]oerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.” MCL 37.2701(f). Mr. Kuilema has not alleged that Calvin interfered with him because he “aided or encouraged” anyone to exercise their right to be free from discrimination or retaliation under ELCRA. Mr. Kuilema has instead alleged that Calvin interfered with him because he helped someone do something else: get married. LGBTQ+ couples’ right to marry is guaranteed by the Fourteenth Amendment to the U.S. Constitution, but it is not a right “granted or protected” by ELCRA.

Mr. Kuilema asks the Court to expand MCL 37.2701(f) beyond its plain meaning because “the purpose of ELCRA is to target the prejudices and biases borne against persons because of their membership in a certain class and to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases.” Pf.’s Supp. Br., at 8 (quoting *Radtke v Everett*, 442 Mich 368, 379; 501 NW2d 155 (1993)) (cleaned up). A deep theological disagreement lies between what Mr. Kuilema characterizes as “offensive or demeaning stereotypes, prejudices, and biases” and what Calvin believes to be a correct understanding of human anthropology regarding sex and marriage as revealed in Scripture, in the context of Christ’s command to “love one another.” At minimum, however, Mr. Kuilema cannot rely on the perceived policy

interests underlying a statute in order to override its plain text. This argument, too, is misplaced.

**II. Mr. Kuilema has failed to state a claim for associational discrimination on the basis of sex.**

**A. Mr. Kuilema was not “discriminate[d] against” because of sex.**

To survive a motion for summary disposition, Kuilema must adequately plead that Calvin discriminated against him on the basis of sex when it declined to renew his teaching contract. But Mr. Kuilema admits his sex played no role in Calvin’s decision. Mr. Kuilema does not claim that, if he were a woman, Calvin’s conduct would have been different. He therefore cannot establish that “but for the sex of the complainant” the adverse action would not have occurred. *Rouch World*, 510 Mich at 420. Because Mr. Kuilema admits that his sex was irrelevant to his termination, he has failed to state a claim for sex discrimination under ELCRA.

Even in the event that *Miller* is extended to disparate-treatment claims, it would only allow plaintiffs to file suit when they suffered damages as a result of someone else’s experience of employment discrimination. Mr. Kuilema has never alleged that anyone else experienced employment discrimination. The Calvin employee whose wedding Mr. Kuilema officiated was not terminated or otherwise disciplined. Even if *Miller* opens a door for some future plaintiffs, therefore, it does not change anything for Mr. Kuilema.

**B. On the allegations of the complaint, Mr. Kuilema’s claim is barred by the First Amendment’s religious autonomy doctrine.**

Even if MCL 37.2202(1)(a) were as broad as Mr. Kuilema argues, his associational discrimination claim would still fail, because—on his own allegations—

his claim is barred by the religious autonomy doctrine (sometimes also referred to as the “ecclesiastical abstention” or “church autonomy” doctrine). This doctrine can prevent otherwise applicable employment discrimination laws from applying to “religious institutions’ hiring of non-ministerial employees when it involves matters of faith and doctrine.” *Union Gospel Mission of Yakima WA v Brown*, 162 F4th 1190, 1196 (CA 9, 2026). That is because, “if state law were to prevent religious institutions from employing only co-religionists, those institutions could be forced to hire employees who openly flout and disagree with their religious principles”—a result that “the First Amendment doesn’t tolerate.” *Id.* at 1197. “Because who a religious organization hires may go to the very character of its religious mission, the church autonomy doctrine protects the decision to hire co-religionists for non-ministerial roles if that decision is based on the organization’s sincerely held religious beliefs.” *Id.*; see also *id.* at 1201-1202 (discussing doctrine’s deep roots); *Macedono-Bulgarian Orthodox Church v Macedonian Patriotic Org*, 27 Mich App 713, 728; 184 NW2d 233 (1970) (“The free exercise of religious beliefs, unhampered by judicial, or legislative, interference is fundamental in our basic concept of constitutional government.”).

The doctrine applies in the employment context where (1) the employer is a religious institution and (2) the religious institution’s employment decision is based on its sincerely held religious belief. *Union Gospel Mission*, 162 F4th at 1209. Mr. Kuilema’s own complaint alleges both components of the doctrine. The doctrine therefore squarely bars his claim.

First, Mr. Kuilema pleaded that Calvin is a religious institution: “Calvin was incorporated to “provide students courses in the liberal arts ... which are of a positively Reformed character entirely in accord with the doctrinal standards of the [CRC].” (App. 4a (Compl. ¶ 10)) (quoting Calvin’s Articles of Incorporation). “Calvin’s purpose is to expose students to a variety of disciplines, all from a distinctly Reformed perspective.” (App. 4a (Compl. ¶ 11)). Every member of Calvin’s board of trustees is appointed by the governing body of the CRC, known as “Synod,” (App. 26a (Compl. Exhibit 1, Art. VII)), and Calvin’s Articles of Incorporation may not be amended without Synod’s approval. (App. 26a (Compl. Exhibit 1, Art. VI)).

Second, Mr. Kuilema pleaded that Calvin terminated him due to matters of faith and doctrine: “Calvin incorrectly believed that officiating the wedding was contrary to the CRC’s position regarding same sex relationships and terminated Kuilema for that mistaken belief.” (App. 16a (Compl. 100)). Indeed, matters of “faith and doctrine”—including longstanding theological disagreements between Mr. Kuilema and Calvin on such matters—are all over the face of the complaint. (App. 6a-7a, 10a-11a, 14a-17a, 44a-45a (Compl. ¶¶ 29-31, 54, 69, 88-89, 93, 99-100, 104-105, 112-113, Exhibit 5, at 4-5)).

At bottom, Mr. Kuilema’s complaint improperly asks a court to (1) declare that his interpretation of Synodical statements is correct and that Calvin’s is wrong, and (2) force a religious institution to retain someone who openly disagrees with it about theological matters and refuses to comply with the required religious processes to voice disagreements and advocate for theological change within the community. Both

of those efforts are barred by the First Amendment, which prevents civil courts from deciding theological questions and protects Calvin's ability to decide which employees are suited or not suited for its religious mission.

After extensive deliberation and consultation over a period of multiple years, Calvin concluded that Mr. Kuilema was not suited for its particular religious mission, despite his many strengths. (App. 44a-45a (Compl. Exhibit 5, at 4-5)). "[A] religious institution may conclude that it would undermine the institution's identity and mission as a religious organization if its own employees contradict or disavow the tenets it teaches." *Union Gospel Mission*, 162 F4th at 1197; see also Calvin's Opp. to App., at 29-38. As pleaded in Mr. Kuilema's complaint, this is the determination Calvin made. It was constitutionally entitled to do so.

### **Conclusion**

The judgment of the Court of Appeals should be affirmed.

MILLER JOHNSON  
*Attorneys for Defendant-Appellee*

Dated: April 8, 2026

By /s/ Stephen J. van Stempvoort  
Stephen J. van Stempvoort (P79828)  
Brett Swearingen (P85790)  
MILLER JOHNSON PLC  
***Attorneys for Defendant-Appellee***  
45 Ottawa Avenue, SW - Suite 1100  
Grand Rapids, Michigan 49503  
(616) 831-1765  
[vanstempvoorts@millerjohnson.com](mailto:vanstempvoorts@millerjohnson.com)  
[swearingenb@millerjohnson.com](mailto:swearingenb@millerjohnson.com)

Lori H. Windham (DC Bar 501838)  
Daniel L. Chen (DC Bar 1781783)  
Pro Hac Vice

THE BECKET FUND FOR RELIGIOUS  
LIBERTY

***Attorneys for Defendant-Appellee***

1919 Pennsylvania Ave, NW  
Suite 400

Washington DC 20006

(202) 955-0095

[lwindham@becketlaw.org](mailto:lwindham@becketlaw.org)

[dchen@becketlaw.org](mailto:dchen@becketlaw.org)

**Certificate of Compliance**

1. This brief complies with the type-volume limitations of MCR 7.212(B)(1) and (G) because this brief contains 9,959 words. As required under MCR 7.212(B)(2), this statement of countable words includes only the elements of the brief listed in MCR 7.212(C)(6)-(8).

2. Under MCR 7.212(B)(3), this statement of the number of countable words relies on the word count of the word-processing system used to prepare the brief.

3. This brief complies with the type style requirements of MCR 7.212(B)(5), because it has been prepared using at least one-inch page margins, 12-point font, and 1.5-linespaced text, except for quotations and footnotes.

*/s/ Stephen J. van Stempvoort*

Stephen J. van Stempvoort

Miller Johnson

45 Ottawa Avenue SW, Suite 1100

Grand Rapids, MI 49503

(616) 831-1700

[vanstempvoorts@millerjohnson.com](mailto:vanstempvoorts@millerjohnson.com)

*Counsel for Defendant-Appellee*