STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
M. J. Kelly, PJ, and Borrello and Rick, JJ

JOSEPH KUILEMA,

Plaintiff-Appellant,

v

CALVIN UNIVERSITY,

Defendant-Appellee.
_____/

Supreme Court No. 168943

Court of Appeals No. 367310

Kent Circuit Court No. 23-3561-CZ

AMICUS BRIEF OF THE PEOPLE OF THE STATE OF MICHIGAN IN SUPPORT OF APPELLANT

Respectfully submitted,

DANA NESSEL
Attorney General of Michigan

ANN M. SHERMAN
Solicitor General

/s/ Marla Linderman Richelew
Marla Linderman Richelew (P55759)
Neil Giovannati (P82305)
Assistant Attorneys General
Attorney for Amicus People of the State of Michigan
3030 W. Grand Blvd, Suite 10-650
Detroit MI 48202
(313) 456-0200

Dated: April 22, 2026

TABLE OF CONTENTS

Page

Index of Authorities ii

Statement of Questions Presented vi

Statutes Involved vii

Statement of Interest of Amicus Curiae 1

Introduction 2

Summary of Argument 4

Argument 6

I. ELCRA's plain text compels coverage. 6

A. Unlike Title VII, MCL 37.2202(1)(a) contains no possessive limitation tying the protected characteristic to the complainant. 6

B. MCL 37.2701(a) does not specify that "the person" retaliated or discriminated against need be the plaintiff. 11

C. *Rouch World*'s but-for standard, correctly applied, confirms coverage. 13

II. Michigan precedent and ELCRA's remedial purpose confirm that associational discrimination is protected. 15

III. This Court should adopt a prima facie test for associational discrimination anchored in *Hazle* and bounded by but-for causation. 18

IV. ELCRA protects class membership, not conduct that constitutes discrimination against a protected class. 20

A. But-for causation distinguishes protected association from ideological affiliation. 21

B. ELCRA's remedial obligation independently limits the claim. 22

Conclusion 24

Word Count Statement 25

INDEX OF AUTHORITIES

Cases

Ames v Ohio Dep't of Youth Services,
605 US 303 (2025) 20

Barrett v Whirlpool Corp,
556 F3d 502 (6th Cir 2009). ..... passim

Barrows v Jackson,
346 US 249 (1953) 2

Beech Grove Investment Co v Civil Rights Commission,
380 Mich 405 (1968) 2, 3

Bostock v Clayton County,
590 US 644 (2020) 10, 13, 22

Brown v Board of Education,
347 US 483 (1954) 2

Bryant v Automatic Data Processing, Inc,
151 Mich App 424 (1986) ..... passim

Burlington Indus, Inc v Ellerth,
524 US 742 (1998) 22

Bush v Shabahang,
484 Mich 156 (2009) 12

Chambers v Trettco, Inc,
463 Mich 297 (2000) 22

Daher v Prime Healthcare Services-Garden City, LLC,
515 Mich 254 (2024) 11

Eide v Kelsey-Hayes Co,
431 Mich 26 (1988) 6, 8

Elezovic v Ford Motor Co,
472 Mich 408 (2005) 3, 14

Faragher v City of Boca Raton,
524 US 775 (1998) 22

Ferguson v Gies,
82 Mich 358 (1890) 2, 3

Frith v Whole Foods Mkt, Inc,
38 F4th 263 (CA 1, 2022) 14

Graham v Ford,
237 Mich App 670 (1999) ..... passim

Hazle v Ford Motor Co,
464 Mich 456 (2001) 5, 18, 19

Hrdlicka v GM LLC,
63 F4th 555 (CA 6, 2023) 19

Joseph v Bd of Regents,
121 F4th 855 (CA 11, 2024) 14

Kuilema v Calvin Univ,
unpublished per curiam opinion of the Court of Appeals, issued July 11, 2025 (Docket No. 367310) 10, 13, 17, 19

Miller v Dep't of Corrections,
513 Mich 125 (2024) ..... passim

People v Kowalski,
489 Mich 488 (2011) 12

Radtke v Everett,
442 Mich 368 (1993) 5, 6

Ray v Swager,
501 Mich 52 (2017) 8, 9, 11

Rouch World, LLC v Dep't of Civ Rights,
510 Mich 398 (2022) ..... passim

Shinholster v Annapolis Hosp,
471 Mich 540 (2004) 9, 12

Sniecinski v Blue Cross & Blue Shield,
469 Mich 124 (2003) 18

Sullivan v Little Hunting Park, Inc,
396 US 229 (1969) 2

Tetro v Elliott Popham Pontiac,
173 F3d 988 (6th Cir 1999) 3, 10, 16, 17

Statutes

42 USC 2000e-2(a)(1) 7

MCL 14.28 1

MCL 37.2101 ..... vi, 1, 7

MCL 37.2202 ..... passim

MCL 37.2202(1)(a) ..... passim

MCL 37.2202(1)(b) 9

MCL 37.2202(1)(c) 9

MCL 37.2202(1)(d) 9

MCL 37.2202(a) vii

MCL 37.2701 9

MCL 37.2701(a) ..... passim

MCL 37.2801 7

MCL 423.307(b) 7

Other Authorities

1976 PA 453 7

2023 PA 6 2

Michigan Const. 1963, art. 1, § 2 1

Michigan Const. 1963, art. 5 § 29. 1

Michigan Constitution, Article I, § 3 1

Michigan Constitution, Article I, § 5 1

Rules

MCR 2.116(C)(8) vi

MCR 7.312(H)(2)(a) 1

STATEMENT OF QUESTIONS PRESENTED

1. Whether the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, provides a cause of action for sex-based associational discrimination, cf. *Miller v Dep't of Corrections*, 513 Mich 125, 137 (2024); and, if so,

   Appellant's answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Yes.

   Court of Appeals' answer: No.

   Amicus's answer: Yes.

2. Assuming the ELCRA does provide a cause of action for sex-based associational discrimination, whether the plaintiff adequately pled such a claim. MCR 2.116(C)(8); *Bryant v Automatic Data Processing, Inc*, 151 Mich App 424 (1986); *Graham v Ford*, 237 Mich App 670 (1999).

   Appellant's answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Yes.

   Court of Appeals' answer: No.

   Amicus's answer: No position.

STATUTES INVOLVED

MCL 37.2202(a):

An employer shall not do any of the following:

(a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

MCL 37.2701(a):

Two or more persons shall not conspire to, or a person shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Attorney General is the constitutionally established officer who serves as the chief law enforcement officer for the State. The Legislature has also authorized the Attorney General to participate in any action in any state court whenever, in her own judgment, she deems it necessary to protect any right or interest of the State or the People of the State. MCL 14.28. On behalf of the People of the State of Michigan, the Attorney General submits this brief in support of Plaintiff-Appellant Joseph Kuilema pursuant to MCR 7.312(H)(2)(a).

Whether the Elliott-Larsen Civil Rights Act (ELCRA) reaches associational discrimination is a question of first impression before this Court with significant consequences for civil rights enforcement across Michigan. MCL 37.2101 *et seq*. The People of the State of Michigan have clearly voiced their commitment to civil rights, requiring the Legislature to create ELCRA in their constitution, and they have a paramount interest in ensuring the Court correctly interprets ELCRA in a manner that fulfills the purpose of preventing and eliminating discrimination. Const. 1963, art. 1, § 2; art. 5 § 29.

The People also have a direct interest in the standard this Court adopts. Without associational protection under ELCRA, private-sector employees have no remedy when terminated because they have stood with persons whom ELCRA protects—while state employees already have constitutional claims for associational conduct under the First Amendment and Michigan Constitution, Article I, §§ 3 and 5. The Legislature's broad remedial language demands the same protection for private-sector workers that the Constitution already provides to state employees.

INTRODUCTION

This case asks whether ELCRA reaches discrimination targeting an employee, not for who the employee is, but for associating with someone ELCRA was enacted to protect. The answer is an unequivocal "Yes."

Michigan has a proud history of answering "Yes" in the protection of civil rights. In *Beech Grove Investment Co v Civil Rights Commission*, 380 Mich 405, 431 (1968), this Court traced that history back to *Ferguson v Gies*, 82 Mich 358 (1890) confirming that Michigan's commitment to civil rights predates and exceeds what federal law has required. In *Ferguson,* this Court rejected the separate-but-equal doctrine 64 years before the United States Supreme Court did in *Brown v Board of Education*. The Legislature codified Michigan's civil rights tradition when it passed the Fair Employment Practices Act (FEPA) in 1955, nine years before Title VII was passed. ELCRA replaced FEPA in 1977. And more than 125 years after *Ferguson*, this Court affirmed protections for LGBTQ residents under ELCRA, which the Legislature later codified. *See Rouch World, LLC v Dep't of Civ Rights*, 510 Mich 398 (2022); 2023 PA 6.

Throughout this proud history, caselaw reflects that ELCRA's federal counterparts—the Fourteenth Amendment and Title VII—provide protections against an effective tool of discrimination: targeting the ally. *See Barrows v Jackson*, 346 US 249, 259 (1953) (recognizing that the Fourteenth Amendment protected a white ally standing as an "effective adversary" against racially restrictive covenants); *Sullivan v Little Hunting Park, Inc*, 396 US 229, 237 (1969) (the law cannot tolerate a white ally "punished for trying to vindicate the rights of

minorities"). The Sixth Circuit built on that foundation in *Tetro v Elliott Popham Pontiac*, 173 F3d 988, 994 (6th Cir 1999), holding that an employee discharged because of his employer's hostility toward his biracial child states a Title VII race claim—it did not matter whether the employee himself was white or Black, because the discriminatory animus was directed at the child's protected characteristic, not the parent's. The Sixth Circuit later emphasized that Title VII protects an employee "as long as" she shows discrimination "because she advocated for protected employees"—whether or not she shares their protected characteristic. *Barrett v Whirlpool Corp*, 556 F3d 502, 514 (6th Cir 2009).

Michigan's Legislature modeled ELCRA in part on Title VII but broadened its reach—covering employers of any size, permitting individual supervisor liability, and extending protections beyond employment to housing, education, and public accommodations. See *Elezovic v Ford Motor Co*, 472 Mich 408, 421 (2005); MCL 37.2201(a). And as this brief explains, ELCRA's text is broader still: unlike Title VII, it omits the possessive limitation tying protected characteristics to the complainant. That is precisely the structure of Kuilema's claim.

The Court of Appeals applied the right standard—*Rouch World*'s but-for test—to the wrong person. The correct question is not whether Kuilema's own sex caused his termination, but whether the sex of the couple he stood with did. And it plainly did. From *Ferguson* to *Beech Grove* to *Rouch World*, Michigan has answered 'Yes' to eliminating discrimination in all its forms. ELCRA's text compels the same answer here.

SUMMARY OF ARGUMENT

The People offer three grounds for recognizing associational discrimination as a cognizable ELCRA claim: ***first***, the statute's plain text compels coverage; ***second***, Michigan precedent and ELCRA's remedial purpose confirm it; and ***third***, a workable prima facie test—with a clear limiting principle—is readily available to govern such claims.

ELCRA's plain text compels recognition of associational discrimination claims. Unlike Title VII, ELCRA omits the possessive limitation tying the protected characteristic to the complainant—prohibiting discrimination "because of" a protected characteristic. MCL 37.2202(1)(a). *Miller v Dep't of Corrections*, 513 Mich 125 (2024), reinforces that drafting choice. Because MCL 37.2701(a) reaches associational retaliation, the same disjunctive clause's prohibition on discrimination must reach it as well.

Michigan precedent and ELCRA's remedial purpose confirm that the statute prohibits associational discrimination. *Bryant v Automatic Data Processing, Inc*, 151 Mich App 424, 428-431 (1986), and *Graham v Ford*, 237 Mich App 670, 676-678 (1999), both held that ELCRA reaches discrimination motivated by the protected characteristics of a plaintiff's associates—as when an employee is targeted because their spouse or child is of a different race, or because they associate with coworkers of a different race. That same discriminatory calculus drives Kuilema's claim. A construction that allows employers to target allies based on the protected characteristics of those they associate with would create an end-run around ELCRA's purpose of "seek[ing] to eliminate the effects of offensive or demeaning

stereotypes, prejudices, and biases" and around *Rouch World's* holding that ELCRA reaches "reasonably comparable evils." *See Radtke v Everett*, 442 Mich 368, 379 (1993); *Rouch World*, 510 Mich at 431.

Finally, the People ask this Court to adopt a clear prima facie test for associational discrimination claims, grounded in *Hazle v Ford Motor Co*, 464 Mich 456 (2001), informed by *Barrett v Whirlpool Corp*, 556 F3d 502 (6th Cir 2009), and anchored in ELCRA's own text. The test will guide the lower courts, protect legitimate claims, and foreclose overextension.

This Court should confirm ELCRA's reach and reverse.

ARGUMENT

I. ELCRA's plain text compels coverage.

ELCRA is a remedial statute to be "liberally construed to suppress the evil and advance the remedy." *Eide v Kelsey-Hayes Co*, 431 Mich 26, 34 (1988). It "seek[s] to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases." *Radtke,* 442 Mich at 379. Excluding associational discrimination from ELCRA's reach would suppress the remedy while perpetuating the evil. Consider an employer whose superstar employee is dating a person of color. When the employer finds out, they terminate the employee. Without an associational discrimination claim, the employer acts on illegal racial bias without consequence—and neither the superstar employee nor the person they are dating has any remedy under the very statute enacted to protect them. ELCRA's text, read without grafting on limitations the Legislature did not include, reaches the claim Kuilema presents. ELCRA's remedial purpose demands no less.

A. Unlike Title VII, MCL 37.2202(1)(a) contains no possessive limitation tying the protected characteristic to the complainant.

Title VII's associational discrimination cases rely on language similar to, but meaningfully different from, the text of MCL 37.2202(1)(a). *See Barrett*, 556 F3d at 512–513 (addressing associational discrimination under Title VII). Although Michigan courts often interpret ELCRA consistent with Title VII, *Rouch World*, 510 Mich at 421; *Radtke*, 442 Mich 381–382, a close comparison of the statutory text reveals a significant difference that strengthens associational claims under ELCRA:

Title VII, 42 USC 2000e-2(a)(1)	ELCRA, MCL 37.2202(1)(a)
It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, **because of such individual's** race, color, religion, sex, or national origin. (Emphasis added).	[An employer shall not] fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, **because of** religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. (Emphasis added).

The critical textual difference: Title VII prohibits discrimination "because of *such individual's*" protected characteristic—possessive language that ties the characteristic to the complainant. 42 USC 2000e-2(a)(1) (emphasis added). ELCRA omits this limitation, prohibiting discrimination "because of" the protected characteristic *without any possessive limitation* and extending relief to "a person alleging a violation of this act" rather than merely an aggrieved individual. MCL 37.2202; MCL 37.2801. ELCRA's predecessor statute reflects a similar distinction. FEPA limited claims to "[a]ny individual claiming to be aggrieved by an alleged unlawful employment practice." MCL 423.307(b) (repealed by 1976 PA 453, replaced by ELCRA, MCL 37.2101 et seq.). When the Legislature passed ELCRA, it rejected both FEPA's narrow standing requirement and Title VII's possessive limitation—a deliberate choice to reach discrimination 'because of' a protected characteristic without restriction as to whose.

Michigan's Legislature knew of both the narrower models of FEPA, passed in 1955, and Title VII, passed in 1964, and chose to omit their limiting language when

passing ELCRA in 1976—a choice this Court has confirmed was deliberate. *Eide v Kelsey-Hayes Co*, 431 Mich 26, 34 (1988). As this Court recognized in *Eide*, the Legislature purposefully replaced FEPA's narrow standing requirement—"any individual claiming to be aggrieved by an alleged unlawful employment practice"—with the broader "a person alleging a violation of this act," extending ELCRA's reach beyond those personally aggrieved by a discriminatory act. *Id.* The same deliberate omission of a possessive limitation in MCL 37.2202(1)(a) signals the Legislature's intent to reach discrimination motivated by *any* person's protected characteristic, including that of an associate. *Id.*; *see also Ray v Swager*, 501 Mich 52, 80-81 (2017) (noting a "change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute").

Calvin argues that ELCRA's text limits its reach to exclude associational discrimination claims, but that argument does not survive scrutiny. (Calvin's Supp Br at 18–29.) Courts may not read into a statute what is not there. *Rouch World*, 510 Mich at 428. First, Calvin contends that the organization of MCL 37.2202(1) into four subparagraphs confirms that the Legislature focused exclusively on the plaintiff's own protected status. (Calvin's Supp Br at 27.) But the structure cuts the other way. Subparagraph (a), the provision at issue here, prohibits discrimination "because of" a protected characteristic without any possessive limitation tying that characteristic to the complainant. Subparagraphs (b), (c), and (d) address specific, defined forms of employer conduct: classifying employees by

protected characteristic, MCL 37.2202(1)(b); administering discriminatory benefit plans, MCL 37.2202(1)(c); and treating pregnancy differently from other conditions, MCL 37.2202(1)(d). Each of these subsections naturally focuses on the affected individual because the conduct described is directed at identifiable plaintiffs. None, however, contains a possessive limitation tying the protected characteristic to the complainant, just as subparagraph (a) does not. Courts must "give effect to every word, phrase, and clause in a statute" and consider "its placement and purpose in the statutory scheme." *Shinholster v Annapolis Hosp*, 471 Mich 540, 549 (2004). The consistent absence of a possessive limitation across all four subparagraphs is presumed deliberate and meaningful; the Legislature is presumed to know the meaning of the terms it uses and to have acted purposefully in omitting language it could have included. *Ray*, 501 Mich at 81.

This Court rejected the identical interpretive argument in the context of MCL 37.2701: the existence of more specific subsections does not limit the broader reach of a preceding provision, and multiple subsections may apply to the same conduct simultaneously. *Miller v Dep't of Corrections*, 513 Mich 125, 142-143 (2024). The same principle governs here—the more specific conduct described in subparagraphs (b) through (d) does not cabin the broader language of subparagraph (a).

Calvin also invokes *Rouch World*'s statement that "by using the term 'individual' rather than 'group,' ELCRA penalizes discriminatory action as applied to individuals." (Calvin's Supp Br at 27-28.) See also *Rouch World*, 510 Mich at 428. But that observation addressed only how the but-for test is applied—the

inquiry is directed at what happened to a specific complainant, not at an employer's aggregate treatment of a class. *Rouch World* says nothing about whose protected characteristic must cause the adverse action. An associational discrimination plaintiff is plainly an "individual" who has suffered a discriminatory adverse action. As recognized in the dissent, *Rouch World* instructs courts to ask whether "a specific individual was treated worse than a member of the opposite sex would have been"—and in an associational discrimination case, that individual is the *associate*, not the complainant. *Kuilema v Calvin Univ*, unpublished per curiam opinion of the Court of Appeals, issued July 11, 2025 (Docket No. 367310), (Rick, J, concurring in part and dissenting in part).

Calvin further contends that MCL 37.2202(1)(a)'s language is "materially identical" to the Title VII language examined in *Bostock* and adopted in *Rouch World*, and that this Court should therefore import *Bostock*'s framework wholesale. (Calvin's Supp Br at 18.) As explained above, the language is not materially identical. But even on Calvin's own terms, the argument fails. *Bostock* analyzed Title VII's possessive phrase "because of such individual's" protected characteristic—the very limitation the Michigan Legislature chose not to include in MCL 37.2202(1)(a). *Bostock*, 590 US at 658–659.

Even under Title VII's narrower possessive language, the Sixth Circuit recognized associational discrimination claims before *Bostock*—and *Bostock* did not disturb that precedent. *Tetro*, 173 F3d at 994; *Barrett*, 556 F3d at 512. Whether this Court interprets ELCRA consistent with Title VII or based on ELCRA's

deliberately expansive language, the result is the same—ELCRA prohibits associational discrimination.

B. MCL 37.2701(a) does not specify that "the person" retaliated or discriminated against need be the plaintiff.

MCL 37.2701(a) provides that a person shall not "[r]etaliate *or discriminate* against a person because the person has opposed a violation of this act." (Emphasis added). In *Miller*, this Court unanimously held that MCL 37.2701(a) reaches associational retaliation—adverse action taken against one person as an indirect attack on another who engaged in protected activity. 513 Mich 125. Because MCL 37.2701(a) places retaliation and discrimination in the same clause, joined by the disjunctive "or," both prohibitions must carry the same scope and reach.

As this Court explained in *Daher*, courts "interpret statutes to discern and give effect to the Legislature's intent," consider "[t]he statute . . . as a whole, reading individual words and phrases in the context of the entire legislative scheme," and enforce "[u]nambiguous statutes . . . as written." *Daher v Prime Healthcare Services-Garden City, LLC*, 515 Mich 254, 262–263 (2024) (quotation marks and citation omitted). The Legislature's choice to place "retaliate" and "discriminate" in the same grammatical structure—sharing the same object and conditions—is presumed intentional. *See, e.g., Ray*, 501 Mich at 81. Statutory language "must be read and understood in its grammatical context," and courts must "give effect to every word, phrase, and clause in a statute" considering "its

placement and purpose in the statutory scheme." *Shinholster v Annapolis Hosp*, 471 Mich 540, 549 (2004).

The word "or" is "a disjunctive term, used to indicate a disunion, a separation, an alternative." *People v Kowalski*, 489 Mich 488, 499 n 11 (2011). Holding that associational retaliation is cognizable under subsection (a) but associational discrimination is not, would require reading "or" out of the statute and would create precisely the kind of conflict between subsections this Court has held must be avoided. See *Bush v Shabahang*, 484 Mich 156, 167 (2009).

More important than the fact that the two prohibitions share a clause is *Miller's* decision about how this clause operates. *Miller* did not hold that retaliation clauses operate differently than discrimination clauses. *Miller* held that MCL 37.2701(a) protects against associational injuries: "MCL 37.2701(a) does not specify that "the person" need be the plaintiff. If such retaliation *or discrimination* is alleged to have occurred, a violation of the ELCRA has been stated." *Miller*, 513 Mich at 133–134, 136 (emphasis added). As the Court further explained, "[t]he logical operation of MCL 37.2701(a) does not contain this limitation"—it does not limit its protection to a plaintiff whose own protected status or activity was the employer's motivation for the ELCRA violation. *Id.* at 136 n 4.

Calvin argues that *Miller*'s reasoning should not extend to discrimination claims because retaliation provisions protect against harm based on what a person *does*, while discrimination provisions protect against harm based on *who* a person *is*. (Calvin's Supp Br at 26.) But that argument turns ELCRA on its head and

presumes a conflict between MCL 37.2202(1)(a) and MCL 37.2701(a) where none exists.

ELCRA focuses on prohibiting discriminatory and retaliatory conduct. It asks what motivated the employer, not how to label the plaintiff's injury. The statute draws no conduct/status line; it draws a line between permissible and impermissible employer motivation. MCL 37.2202 and MCL 37.2701(a) operate in complementary domains. MCL 37.2202 reaches the discriminatory act itself, while MCL 37.2701(a) reaches adverse action taken against those targeted because of their connection to protected persons. A single act can violate both simultaneously, precisely as *Miller* confirmed. *Miller*, 513 Mich at 142-143.

C. *Rouch World*'s but-for standard, correctly applied, confirms coverage.

In *Rouch World*, this Court agreed with *Bostock* that sex discrimination encompasses discrimination based on sexual orientation. The operative question is whether the employer would have taken the same action but for sex. *Rouch World*, 510 Mich at 421-422.

As the dissent explained, the Court of Appeals majority misdirected the but-for inquiry. The majority asked whether *Kuilema's* sex was a but-for cause of his termination. The correct question under MCL 37.2202(1)(a) is whether sex—anyone's sex—was a but-for cause of the discriminatory act. Had Kuilema officiated a heterosexual wedding, Calvin would not have treated Kuilema's role as a terminable offense. Calvin's motivation for the termination was the sex of the

individuals married; sex was therefore the but-for cause of Calvin's actions. Accordingly, the but-for test is satisfied.

Miller supports this approach. The *Miller* plaintiffs were terminated not because of their own protected activity, but because of their association with someone who engaged in it. *Miller*, 513 Mich at 133–134. This Court asked not whether the plaintiffs themselves had opposed a violation, but whether the employer's adverse action would have occurred but for the protected conduct of the person with whom they associated. The same framework applies to discrimination.[1]

Calvin invokes the but-for standard for the opposite proposition—that the plaintiff's own protected characteristic must be the but-for cause of the adverse action, not the associate's. (Calvin's Supp Br at 18, 22, 28.) Calvin relies on federal circuit cases holding that associational discrimination always requires the plaintiff's own protected characteristic to be at stake. *Id.* See also *Frith v Whole Foods Mkt, Inc*, 38 F4th 263, 272 (CA 1, 2022); *Joseph v Bd of Regents*, 121 F4th 855, 870–71 (CA 11, 2024). But those cases interpret Title VII, which, as addressed above, contains the possessive limitation "such individual's" that ELCRA deliberately omits. Where ELCRA's text is broader than Title VII's, Michigan courts do not follow federal precedent. *Elezovic*, 472 Mich at 422.

[1] *Rouch World* did not raise the question presented here. The complainant in *Rouch World* was herself a member of the protected class—a woman whose own sex was directly at issue. The Court had no occasion to address, and did not address, a purely associational claim where the plaintiff shares no protected characteristic with the associate.

II. Michigan precedent and ELCRA's remedial purpose confirm that associational discrimination is protected.

The Court of Appeals has long recognized association discrimination under ELCRA, as reflected in *Bryant* and *Graham*, and *Miller*'s reasoning from associational retaliation confirms the same result. *Bryant* and *Graham* were correctly decided and should be affirmed. Although decided under ELCRA's race provisions, their reasoning applies with equal force to sex-based claims because the statutory text is identical across protected classes.

In *Bryant*, the Court of Appeals held that ELCRA reaches discrimination motivated by the protected characteristics of a plaintiff's associate, not just plaintiff's own characteristics. 151 Mich App at 428-429. Both parties there acknowledged that the plaintiff was "not complaining of discrimination based on her own race." *Id.* at 430-431.

Similarly, in *Graham*, the Court of Appeals held that MCL 37.2202's "broad language" and the policies behind ELCRA provided "protection from discrimination for associating with co-employees." 237 Mich App at 678. The claims rested not on the plaintiffs' own racial identity but on "race association." *Id.* at 681.

The Court of Appeals majority and Calvin both attempt to recharacterize *Bryant* and *Graham* as "protected status plus" cases, arguing that those plaintiffs themselves possessed protected characteristics that were part of the discriminatory calculus, and that associational protection has never been extended to a plaintiff whose own protected status played no role whatsoever. Neither *Bryant* nor *Graham* conditioned associational protection on the plaintiff's own protected status. The

Bryant court held that where an employer discriminates against an employee because of an interracial marriage, "the race of both the employee and the spouse is a motivating factor" requiring the plaintiff only to "allege that racial considerations motivated the defendant's conduct." 151 Mich App at 430. The holding turned not on *whose* race drove the animus, but on whether racial considerations motivated the adverse action at all. That is the correct inquiry under ELCRA—and it is equally available where, as here, the discriminatory animus is directed entirely at the associate's protected characteristic.

Graham likewise characterized the claims as resting on "race association"—the race of the persons with whom the plaintiffs associated, not the plaintiffs' own—and did not condition the holding on who the plaintiffs were. 237 Mich App at 681. Calvin's reading would require this Court to hold that *Bryant* and *Graham* implicitly conditioned associational protection on the plaintiff's own status being in play—a limitation neither court required.

The Sixth Circuit reached the same conclusion under Title VII in *Tetro*: the plaintiff was white, but what mattered was not his race but the biracial identity of his child. Whether the plaintiff had been white, Black, or Latino, the discriminatory animus was directed entirely at the child's protected characteristic, not the parent's. *Tetro*, 173 F3d at 994. Although *Tetro* interprets Title VII rather than ELCRA, it is persuasive authority for the same proposition and ELCRA's broader text, which omits the possessive limitation Title VII contains, supports the same or wider reach.

The throughline for these cases is that the protected characteristic—regardless of whose it is—motivated the adverse conduct, and therefore the conduct was unlawful. That is the correct question under ELCRA's text, and it resolves Kuilema's claim in his favor. A "protected status plus" requirement would read into ELCRA a limitation the Legislature did not include and that *Bryant*, *Graham*, and *Tetro* did not impose. Kuilema's purely associational claim is not a novel extension of these holdings; it is their straightforward application.

The dissent identified the majority's core error: applying *Rouch World*'s but-for test to the wrong person. *Kuilema v Calvin University*, unpublished per curiam opinion of the Court of Appeals, issued July 11, 2025 (Docket No. 367310) (Rick, J., concurring in part and dissenting in part). *Rouch World* instructs courts to ask whether "a specific individual was treated worse than a member of the opposite sex would have been." *Rouch World*, 510 Mich at 428. In an associational discrimination case, that individual is the *associate*, not the complainant. The majority's error was not in applying *Rouch World*—it was in directing the but-for inquiry at the wrong person.

MCL 37.2202(1)(a) reinforces this conclusion. The statute does not ask whether the complainant belongs to the protected class. It asks whether the employer discriminated "because of" a protected characteristic—anyone's. The Court of Appeals' distinction treats the availability of a direct claim as a ceiling on associational protection, when in fact the two theories are independent. *Bryant* and *Graham* found associational protection in ELCRA even where a direct claim was

also available—they did not hold that associational protection is available *only* where a direct claim also exists. The holdings control.

Without associational protection, a private employer may lawfully terminate an employee for officiating a same-sex wedding, for having a transgender child, for being in an interracial marriage, or for attending a religious celebration not aligned with the employer's preferences. A statutory interpretation that excludes these claims undermines ELCRA's remedial purpose.

III. This Court should adopt a prima facie test for associational discrimination anchored in *Hazle* and bounded by but-for causation.

The People request that the Court articulate a clear prima facie test for associational discrimination claims—one grounded in current ELCRA case law, consistent with *Bryant*, *Graham*, and *Miller*, and anchored by a limiting principle that will guide the lower courts and prevent overextension.

A traditional ELCRA discrimination claim may be proven by direct evidence or, when direct evidence is not available, by circumstantial evidence through the familiar burden-shifting framework. *Sniecinski v Blue Cross & Blue Shield*, 469 Mich 124, 132 (2003). When proceeding by circumstantial evidence, a plaintiff must demonstrate that (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) she suffered the

adverse employment action under circumstances giving rise to an inference of unlawful discrimination. *Hazle v Ford Motor Co*, 464 Mich 456, 462-463 (2001).[2]

In an associational discrimination claim, the plaintiff does not seek protection based on her own membership in a protected class. Rather, she seeks protection from discrimination directed at the protected characteristic of a person with whom she associates. The second, third, and fourth element apply with equal force to an associational discrimination claim; only the first element of the claim must be adjusted. The People propose that the first element require the plaintiff to show association with a protected class under ELCRA or conduct directly connected to a protected class, including: (1) association with a specific person possessing a protected characteristic; (2) attendance at or participation in activities, events, or organizations connected to a protected class; or (3) other conduct a reasonable employer would understand as connected to a protected class.

This proposed element is intentionally broad. It reaches association with a specific person possessing a protected characteristic, as in *Kuilema*, but also reaches association with a protected class more generally, including conduct connected to a protected group (attending a Pride festival, a Juneteenth celebration, or a religious service) without requiring identification of any specific individual.

[2] While not expressly stated in this prima facie test, an employer must also know that the person belongs to a protected group—discrimination based on protected characteristics cannot occur if the employer is unaware of those characteristics. *Hrdlicka v GM LLC*, 63 F4th 555, 566–567 (CA 6, 2023).

But-for causation under *Rouch World* does the limiting work at the prima facie stage: the circumstances must give rise to an inference that the protected characteristic of the associated class—not ideology, conduct, or some other basis unconnected to a protected characteristic—motivated the adverse action.

This formulation is consistent with *Barrett*, which recognized that a plaintiff satisfies the association element through "association with or advocacy on behalf of protected employees." *Barrett*, 556 F3d at 512.

IV. ELCRA protects class membership, not conduct that constitutes discrimination against a protected class.

In *Ames v Ohio Dep't of Youth Services*, 605 US 303 (2025), the U.S. Supreme Court unanimously held that discrimination standards must apply uniformly—courts cannot impose heightened requirements on majority-group plaintiffs. Because Michigan often interprets ELCRA consistently with Title VII, the standards governing associational claims must apply equally regardless of which protected class is involved. See *Rouch World*, 398 Mich at 411. This raises a legitimate concern: if an employee terminated after officiating a same-sex wedding can claim associational discrimination, can an employee terminated for membership in a group that promotes discrimination claim the same? The People submit that the answer is "No", for two independent reasons.

A. But-for causation distinguishes protected association from ideological affiliation.

The distinction lies in what motivated the employer's action—the but-for cause. Associational discrimination occurs when the employer acts because of a protected characteristic of the associate. Terminating an employee for association with a group promoting a discriminatory ideology is not associational discrimination, even if the organization's membership correlates with a protected characteristic. An employer who terminates an employee for membership in a white supremacist organization acts because of discriminatory ideology, not because the employee associates with white people. ELCRA does not protect the discrimination it is designed to eliminate.

The facts here illustrate this contrast. Calvin would not have terminated Professor Kuilema for officiating a wedding between a man and a woman.[3] The distinguishing factor was the couple's sexual orientation. Calvin thus discriminated against the married couple based on a protected characteristic by terminating Kuilema for his association with them. By contrast, an employer who terminates someone for membership in an organization whose defining purpose is to discriminate against a protected class would take the same action regardless of the group's demographic composition. The objection is to the discriminatory ideology, not to any protected characteristic.

---

[3] The People take no position on the availability of specific constitutional defenses in this case, including any claim under the ministerial exception or the church autonomy doctrine. This brief addresses only the broader question whether ELCRA, as a matter of its statutory text, reaches associational discrimination.

B. ELCRA's remedial obligation independently limits the claim.

Title VII and ELCRA affirmatively require employers to eliminate discrimination, harassment, and retaliation from the workplace. Courts have long understood this obligation to include terminating employees who engage in such conduct. See, e.g., *Faragher v City of Boca Raton*, 524 US 775, 807 (1998) (employers must "exercise reasonable care to prevent and correct promptly any sexually harassing behavior"); *Burlington Indus, Inc v Ellerth*, 524 US 742, 765 (1998) (same). Michigan courts have recognized parallel obligations under ELCRA. See *Chambers v Trettco, Inc*, 463 Mich 297, 311–312 (2000) (employer liability for hostile work environment depends on adequacy of remedial response).

An employee whose conduct creates a hostile work environment for protected employees, or who engages in harassment or discriminatory behavior, cannot convert the employer's legally mandated remedial action into an associational discrimination claim. When an employer terminates an employee to fulfill its statutory obligation to maintain a discrimination-free workplace, the employer does not act "because of" a protected characteristic of anyone the employee associated with. The employer acts because of the employee's own unlawful conduct.

This framework requires no normative judgment about "good" versus "bad" associations. It applies *Bostock*'s but-for causation analysis while recognizing that employers not only may, but must, act against employees whose conduct violates the civil rights of others. *Ames*'s uniformity principle is satisfied: the same standard applies to all plaintiffs, and that standard does the work of separating cognizable associational claims from those that are not.

The following table illustrates how the associational discrimination framework would apply across various scenarios:

Scenario	Covered?	Rationale
Employee terminated for officiating same-sex wedding	**Yes**	Direct association with individuals based on their sexual orientation; employer knew of association; but-for causation satisfied
Employee terminated for having transgender child	**Yes**	Direct familial association based on child's gender identity
Employee terminated for interracial marriage	**Yes**	Direct familial association based on spouse's race; *e.g.*, *Bryant*, 151 Mich App 424. The individual may also have a traditional claim.
Employee terminated for attending a mosque to support an associate	**Yes**	Direct association based on religion of congregants
Employee terminated for membership in white supremacist organization	**No**	Termination based on discriminatory ideology, not because employee associates with white people; employers have independent duty to maintain discrimination-free workplace

The but-for test does the work. The question is whether the employer would take the same action against an employee engaged in materially similar conduct absent the protected characteristic, not whether the employer can label the conduct "ideological."

CONCLUSION

ELCRA's text, read broadly as required and without grafted-on limitations, prohibits associational discrimination. Michigan precedent in *Bryant*, *Graham*, and *Miller* confirms it, and ELCRA's remedial purpose requires that prohibition. A clear limiting principle—protecting class membership, not conduct constituting discrimination against a protected class—ensures the doctrine serves ELCRA's purpose without overreach.

The People respectfully request that this Court (1) hold that ELCRA provides a cause of action for associational discrimination; (2) adopt the four-element prima facie test proposed above; and (3) reverse the Court of Appeals and remand to the circuit court.

Respectfully submitted,

DANA NESSEL
Attorney General of Michigan

ANN M. SHERMAN
Solicitor General

/s/ Marla Linderman Richelew
Marla Linderman Richelew (P55759)
Neil Giovannati (P82305)
Assistant Attorneys General
Attorney for Amicus People of the State of Michigan
3030 W. Grand Blvd, Suite 10-650
Detroit MI 48202
(313) 456-0200

Dated: April 22, 2026

WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.312(A) and 7.212(B) because, excluding the part of the document exempted, this amicus brief contains no more than 16,000 words. This document contains 5,539 words.

/s/Marla Linderman Richelew (P55759)
Assistant Attorney General
Attorney for Amicus People of the State of Michigan