MICHIGAN SUPREME COURT

PUBLIC HEARING

June 7, 2023

CHIEF JUSTICE ELIZABETH CLEMENT: Good morning and welcome to our June 7th public hearing. Welcome everyone, all of our speakers that are joining us. We have a very long hearing today, so I just want to remind all of our speakers that you have three minutes. We ask that you please respect that time limit. And our first item today is proposed amendments of MCR 9.220, 9.221, 9.223, 9.232, and 9.261 that would help protect the confidentiality of a grievant who submits a request for investigation to the Judicial Tenure Commission. And our first speaker today will be Judge Travis Reeds from the Michigan District Judges Association.

JUDGE TRAVIS REEDS: Thank you, Chief Justice, and may it please the Court. Travis Reeds on behalf of the District Judges Association. I was chosen to speak about our commentary on this proposed amendment. I'd like to start out by saying that the District Judges Association does not support this amendment as a standalone. However, we very much try to be solution-oriented, and we attach to our written commentary some proposed modifications to the rules as a whole, which we think would address some of the problems that we identify and that, I think, could be coordinated with some level of grievant confidentiality. The primary concerns that we have are basically due process concerns for the judges which can be exacerbated with the addition of grievant and RFI confidentiality. Some of these specifics in the current proposal are overly restrictive. For example, the proposal that upon request anyone that's interviewed or asked by the JTC not to communicate in any way about the investigation must remain silent. That would be an impediment to judges in trying to interview witnesses on their own. I mean, read as it—as it is proposed, that would preclude a judge who's a respondent from actually talking to the witnesses that have been asked by the JTC not to speak. So, there are several problems with it. We did quite a bit of research and investigation. We contacted all the 50 states. We did quite a bit of work on this and some of the expressed concerns, like grievants being scared to come forward because of fear of retribution, I think, are very well addressed in our proposal. One of the things that we suggested was just make it a clear indication of misconduct. If there's an issue with that, put it in the court rule that retaliation against a grievant is misconduct. So, while we while we oppose this as written, we would very much ask the Court to consider posting our proposal or some other proposal to the rules as a whole to address some of these issues, such as the length of time it takes for a grievance to go forward, for public comments so that we can try to, if possible, ask you

to fix the whole system rather than just focus on the issue of grievant confidentiality. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you, Judge Reeds. Any questions?

JUSTICE MEGAN CAVANAGH: I just have one, Judge Reeds. Thank you for your comments. I'm wondering if the ideas of the MDJA has proposed, and in their proposal, if that had been discussed with the other judicial associations, MJA, the MPJA? If there was—there was any communication at that point or that you would anticipate that type of discussion.

JUDGE TRAVIS REEDS: So, there was discussion between the organizations initially. We just decided for a variety of different reasons to kind of go our own way. I do think that if you were to post more broad changes for public comment, including grievant confidentiality—and one thing I will say is that the District Judges Association proposal does very, very little change to the proposal that's on the table today. In other words, in an attempt to try to accommodate that but yet intertwine it with other procedural due process fixes and things like that, discovery fixes, um we felt that that could be balanced with grievant confidentiality along with other things. And so I think that the other organizations—and specific answer to your question—would be very interested in talking about that if you were to post it. However, we never got to the point where they had a chance to look at this. To be honest, Justice, we decided kind of the eleventh hour that we were going to go our own way and we made these modifications within about 36 hours. So, we did it kind of quickly and we didn't have a chance to yes you have other organizations.

JUSTICE MEGAN CAVANAGH: Okay, I appreciate that. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you, Judge Reeds. Our next speaker is Samantha Hallman.

SAMANTHA HALMAN: Hello, Justices. May it please the Court. Thank you so much for this opportunity to comment orally. I am definitely in support of this proposed court rule. I did submit a written comment. I'm sure you've all had an opportunity to read it. I just wanted to come in-person and reiterate that judicial abuse is real. It's happening. It is pervasive in some courts and, importantly, it's under-reported. And the reason it's underreported is that the people who feel comfortable reporting it don't have sufficient means to kind of monitor these hearings and the people who do see it tend to be court staff and attorneys who are, of course, at the mercy of judges who aren't adhering to, you know, the rule of law or judicial canons.

And there's a real fear of retaliation and this fear of retaliation is not hypothetical or imaginary. It does happen. It's often hard to prove and it's something that I think really prevents this information from getting to the people it needs to get to in a timely way and it really prevents the kind of accountability that I think the people need to see to have confidence in their courts. So, I do appreciate the concept of due process and I appreciate that there needs to be fairness in giving a judge the opportunity to have his or her say in terms of responding to a grievance. But the way I read the proposed court rule, a grievant who is confidential is only confidential if they are not a witness or until that that grievance becomes an actual complaint filed by the JTC. So, I don't think that it's—the due process is quite the concern that all of these judicial organizations are trying to claim that it is. And importantly, I just want to point out, too, that I'm concerned that the job security of judges is being, you know, sort of privileged in this conversation over the due process rights of low-income litigants who, you know, are often pro se, don't have anybody supporting them, are going to hearings for minor misdemeanors without any anybody watching or any support. And so, their due process rights are also at stake. So, when you're weighing these, I really would just ask that you be cognizant of that. I do support this rule. I hope that you tweak section (E) and I'm happy to answer any questions if anybody has any of those. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: I don't see any questions. Thank you for your time today. I appreciate it.

SAMANTHA HALMAN: Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Our next our next item is ADM file number 2022-37, which is a proposed administrative order that would create a vendor neutral citation system for Michigan appellate decisions. We have several speakers. We will start with Erin Rodenhouse. Erin, I think you're on mute. I just found you.

ERIN RODENHOUSE: There. Sorry—just to say I'm an appellate attorney at Collins Einhorn. I sit on the Appellate Practice Section council and I'm a law review nerd. I submitted a letter in January that encapsulates my views on the proposed system. I would just like to address something that came up since my letter and that's this idea of having two systems where practitioners can use Blue Book and the Court can use its own system. And I don't think that's going to resolve any of the problems I raised in my letter because we're all still going to do whatever the Court does. We do so as a matter of respect. We do so to make our briefing helpful to the Court in terms of researching the issues that we're raising and the relief we're requesting. And we would also just do whatever the Court does just to mitigate the cost. Already I explained how much this would increase the cost of brief drafting and if we were doing Blue Book, we would have

to go look up the Regional Reporters for the new citation. So, it doesn't really solve the idea of having two systems—one for practitioners, one for the court—doesn't really solve any of the issues I raised in my letter. And so I would just ask that, you know, the Court decline the invitation to adopt a new system and that—that's all I have to say. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Scott Bassett.

SCOTT BASSETT: Yes, thank you for allowing me to appear this morning. I'm here both on behalf of myself and on behalf of the Michigan Coalition of Family Law Appellate Attorneys. We've taken a look at the proposal. We have concerns about the need for the proposal as technology has developed. We certainly have a lot of ways of getting to case information without having to use the commercial vendors. I did a number of tests on my own cases in this Court and in the Court of Appeals, and I have yet to find a case where I couldn't get not only the opinion but all the orders using a free service like Google Scholar. So, while this proposal might have made sense a decade or two ago, it doesn't make nearly as much sense today. Now, if something like this were to be adopted, we do have some concerns about the specifics. The most important, I think, is the citation format that's proposed. We believe it can be simplified. And the reason for that is, I think is important. We're now in the new era, almost a year now, of using word limits instead of page limits. And in some of our complex—we do a lot of child custody work and those records can be very long and factually intense, and every word can count so having a more simplified citation format makes a lot of sense. If you look at our letter, which was submitted March 29th, we do propose that—a more universal citation format just include the case name followed by a designation of whether it's an order or an opinion—that is missing from the current proposal—and then simply the date and the case number. And we've had no difficulty finding any case with that information. In fact, the case number alone is usually necessary. My MCFLAA colleague Liisa Speaker is going to be speaking on behalf of herself and will address a couple of the other issues that that MCFLAA had concerns about.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Our next speaker is Emma Lawton from SADO and MAACS.

EMMA LAWTON: Good morning, your Honor. Emma Lawton. I'm an assistant defender at the State Appellate Defender Office, speaking on behalf of SADO and MAACS. We do support the creation of a vendor neutral citation format for Michigan's courts. As we noted in our letter, we do think it's important for the Court to clarify that this is a parallel citation that doesn't eliminate or replace citations to the Michigan

Reporters. Our understanding is that looking at a court opinion that is published after the vendor's neutral citation were adopted, there would still be a citation to the Michigan reporter for an attorney who is looking up a case or trying to understand what cases are being cited. The primary benefit of this proposal is that it would improve public access to the Court's decisions. Our clients, their families, and many other Michiganders who have not had the benefit of taking a legal research class or who do not know how to use Google Scholar look to these opinions every day because those decisions are directly impacting their lives. The courts run on ideas and that only works if citizens have access to those ideas and the courts' only way of communicating their ideas is through writing opinions. The accessibility of that opinion is the key, and the accessibility of the earlier court decisions that opinion is setting as precedent is also key. We think this proposed citation format is a good balance of fairness and efficiency. It identifies a case using information that's recognizable to a lawyer and a non-lawyer: the year and the docket number. And, in fact, under the current court rules, that's the same information we would use to cite a recently published decision such as *Wilmore-Moody versus Zakir*, which was issued on May 31st, and does not currently have a reporter citation. It seems to us all the vendor neutral citation is doing is cleaning up that information, putting in a consistent citation format that's going to be recognizable to a non-lawyer regardless of what search engine they're using to find that opinion. Again—so we asked that the Court just clarify this is going to be a parallel citation and it won't affect the way that legal research is conducted for lawyers. But it does have a great benefit for non-lawyers who are representing themselves in the system or simply trying to access this. Thank you for considering this change and for the opportunity to speak today.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Next is Liisa Speaker.

LIISA SPEAKER: Good morning, your Honors. Like Scott Bassett mentioned, I'm speaking on behalf of both on the Michigan Coalition of Family Law Appellate Attorneys, as well as myself as the owner of the Speaker Law Firm where we have four appellate attorneys that work here, including myself. I just wanted to make two points regarding the rule proposal. One, there is little benefit and maybe some hardship by asking us to include the event number on the Court of Appeals docket. That means in every single case where we're opting to use the citation format—and I agree with what others have said—that we would, you know–if the Court adopts this, we're going to do our darndest to follow what the Court's using because we want to be consistent with the Court. But having to look up the event docket on every single case will be time consuming not only for people like me who have staff that can do it, it's going to be time consuming for the solo practitioners and even for the in pro pers, and with little

benefit to the Court because, if we have the date of the opinion or the date of the order, when you go to the docket it will be—should be fairly obvious which document you're looking at. You don't need to additionally go and put in the docket number or, I'm sorry, the event number from the docket. And the other concern we have with regard to the event number is that is going to force, like I said, staff is going to have to go look that up, as long as—as well as everybody in the public who might be citing cases in briefs and whatnot. It's going to put a strain on the Supreme Court's website server. We've had problems with it ever since the website was upgraded. It's much more time consuming to find anything on the Court of Appeals' website. It used to be fairly easy if you had the docket number. Now you have to click a bunch of buttons even if you have the docket number for the case you're looking for. But now it's even more concerning that there would be a lot more people going to that website for everything, not just for unpublished opinions which is what we're doing now, but for every single case whether it's published or not, every single order. It's going to put a strain, we believe, on the website system and that causes concerns as well. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. I don't see any questions. Our next item, item number four is ADM file 2021-35, which are proposed amendments of MCR 7.202 and 7.209 that would eliminate certain orders denying governmental immunity to a governmental party from the definition of a final judgment or final order. We have a number of speakers for this item as well and we'll start with Adam Tountas.

ADAM TOUNTAS: Thank you, Madam Chief Justice, and may it please the Court. Adam Tountas, appearing on behalf of the Michigan County Road Commission Self-Insurance Pool. My colleague and I, Bill Henn, submitted a written comment. I don't want to belabor the points we made. I just want to point out they were parroted by several other lawyers representing public servants. Governmental immunity is a critically important part of the way our state does things. Government has to do hard things. They don't get to subject their decision-making process to the same risk calculus private actors have. They have—people have to teach kindergarten, people have to build roads and bridges, people have to defend our streets, people have to do a bunch of difficult things. And the state legislature in enacting the GTLA made this policy decision that, in doing those things, those folks should be subject to the political process. They are politically accountable to their constituencies, but they ought not to be subject to the legal process other than under a few very narrowly tailored exceptions. And that makes good sense because the public fisc is involved anytime a governmental agency is sued. Now the two proposed court rule changes, we would encourage—we have strong opposition. We would encourage the Court not to adopt them and the reason is that they're very necessary to the way government entity lawyers do their work. Now, when

you move for summary disposition, you're often testing the legal architecture behind a claim and when those rulings are denied, you want to get a second opinion. And the reason is because immunity is a characteristic of government but it's not just immunity from final judgment, it's immunity from suit itself. And so, if you are forced to go through the paces and litigate a claim to trial or final verdict, you're incurring those costs. You're subject to the vagaries of the civil litigation and justice system that the legislature didn't want folks who are in government to be subject to. So, we would just say that if you don't have—if you don't have the ability to get that second opinion on the front end, you incur those costs and Immunity is sort of pointless. I do want to say this, I spent a lot of time last night reading through all the comments. Some of them on both sides were incredibly hyperbolic and I want to say this it does no good to use absolutist language like "all" or "never," or to cast each one of these defense motions as frivolous or plaintiff's cases as frivolous. If the last few years have taught us anything, it is that we all have a lived experience. But it is unique to us, and we are obligated to listen to the folks around us to do our best. And so, when you resolve the questions as to whether or not these court rules are necessary, I would encourage this Court to be data driven and the data that's been cited by several folks, including us, is that one to two percent of the Courts of Appeals' docket deals with these cases. They're not voluminous and the reversal rate is more than 50 percent where the Court of Appeals' normal reversal rate is like 20 percent. And so, it's critically important that we preserve this right to seek review on the front end of cases. That's all I have, your Honors, unless they're any questions. I'd be pleased to answer.

JUSTICE MEGAN CAVANAGH: Mr. Tountas, I have a question. And I hear and I appreciate your comments and the concern about having an appellate review of—on the front end, as you say, of a denial of immunity because it is a—I mean there's no question of these rules don't affect the immunity from liability afforded to the state, to an individ—you know, to an entity, to an individual, teacher, employee, whatever. That—like we're not questioning the ability, right, or the immunity from liability? It's a question of immunity from suit and that review on the front end. Why does Michigan's fairly unique and widely accessible open app for leave process. I mean, there isn't an order—trial court order that can't be appealed on an interlocutory basis, which is unique to Michigan. It's certainly different than the federal system and it's—and it's different from a number of other states. Why is that interlocutory appeal, the app for leave process not sufficient to protect the concerns that you raise.

ADAM TOUNTAS: Thank you, Madam Justice. It's a great question and I think the answer to it is that an interlocutory appellate system puts discretion on the part of the Court of Appeals' panel making that decision. And the exercise of discretion, for better or worse—we're all human beings—leads to inconsistent results. And so you may

have a panel that decides, this is an issue that's ripe, I want to hear this right now, and effectively creates the situation like we have now. But you may have one that doesn't. And so what that incontinuity [sic] does to a governmental entity defendant is, it forces another consideration into this sort of litigation risk calculus. It forces them to sort of have to account for, not just another round of briefing, but, you know, they may end up back in trial on a claim that ends up being dismissed because the legal architecture is defective. You know, your Honor, when I bring these motions for summary disposition on the basis of immunity, eight out of ten times, nine out of ten times, they're in lieu of an answer to the complaint. They're brought on the front end; they're not brought after the close of discovery. They're brought to test the legal architecture of the claim and claims can get very creative. Members of the [indecipherable] bar are very smart and creative as to how they attempt to work around governmental immunity. And so, we need that opportunity on the front end and then we need to know because it adds—it adds a layer of predictability. We need to know that we're going to get that second opinion when we need it and the delivery of that second opinion on the architecture, on the propriety of that architecture doesn't depend on one panel's particular view of our case, the last case they had, so on and so forth. We'd like to take that discretionary aspect out of it to provide the continuity, because continuity is an important part of immunity.

JUSTICE MEGAN CAVANAGH: Okay, thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Don Fulkerson from the Michigan Association for Justice

DON FULKERSON: I thought Justice Zahra had a question but I'll go ahead here. Good morning. May it please the Court, I'm Don Fulkerson. I've been asked by the Michigan Association for Justice to speak on their behalf this morning. We submitted a letter on the 21st of March and the thesis of our letter is—as—I mean, goes to the question that Justice Cavanagh asked. We have not heard a persuasive argument about why Michigan's very liberal, open-ended application mechanism is inadequate to protect the legitimate interests of governmental defendants. We—I've read through all of these letters and I appreciate the comments of the last speaker that many of them are hyperbolic and unsupported but there have been comments about—I haven't seen a rebuttal to the position regarding the adequacy of the application process. I've heard—seen terms like "illusory" and "inconsistent," which the previous speaker just said, "well, the application process is inconsistent." I don't see any—there's been any demonstration of a systemic dereliction or inadequacy of the Court of Appeals' application procedure and I would also—I'm sure the Court has seen Judge Shapiro's letter and you know we do have a—we do have a reversal rate here. But also, there's

also significant affirmance rate relating to fact questions that are just unnecessarily delayed. And the application process is more than adequate to deal with that. Now, the argument—the only argument about there's no duplication of cost of the same cost or the same procedure. The only argument is, well, you have to file a second brief. Well, we know that briefing on leave grants are limited to the issues presented in the application, so I don't see how this is a significant expenditure or burden for governmental defendants. Now let me—I have a minute left, I have to try to speak a little fast. The opposite—the opponents of this proposal have based their argument in substantial part on the proposition that Michigan—the governmental immunity law immunizes governmental defendants from suit, not from liability. That is untrue and I would urge the Court to look at *Marrical versus Detroit News*, 805 F2d 169, pages 172 to 174, and the *Walton* case, that's 995 F2d 1331, 1343. And it's the plain language of 1407; it's liability protection, not protection from suit. I would also—I would want to respond to the argument regarding the disruption of federal appeals and I would urge the Court to look at *Krycinski versus Pakhan—Packowski*, 556 F Supp 2d 740, 742. That establishes that the reasoning that—and this is just patently wrong that the—

CHIEF JUSTICE ELIZABETH CLEMENT: Mr. Fulkerson, thank you. Sorry, we've reached your time limit. I appreciate it. Thank you for being here today and commenting.

JUSTICE BRIAN ZAHRA: But Mr. Fulkerson was right. I did have a question for the last person, so I'll ask it of him.

CHIEF JUSTICE ELIZABETH CLEMENT: Great.

JUSTICE BRIAN ZAHRA: I appreciate what you're saying and it's a very difficult claim here. So, on the one hand, the plaintiff is concerned about tactics that will result in delay that are unnecessary because the motion simply isn't strong, doesn't have legal or factual merit. On the other hand, this is—we're talking about the government coffers, and we have statistics that show that that there's a very high reversal rate and there should be some basis to get that addressed up front. What would you think of a court rule, if we were to keep this but then add something that would liberalize or expand the notion of the ability to get sanctions. So, something stronger on behalf of the party seeking sanctions than devoid of legal merit. Something, I'd say, that if the court finds that this was undertaken for the purpose of delaying proceedings or, I'd have to work on the language, but something along those lines that would provide a layer of protection to address your concerns. What would you think of that type of rule?

DON FULKERSON: Justice Zahra, are you talking about, for example, a proposed—a proposal perhaps to amend 7.216? Are you talking about a trial court rule—

JUSTICE BRIAN ZAHRA: No, no. I'm talking about an appellate rule. If the appellate court finds that this appeal shouldn't have been taken or there's nothing here or very little here to support it, such that it is delaying the proceedings, the court can issue an order imposing costs on the defendant, not to defendant's counsel but on the defendant, for pursuing an appeal that should not have been pursued.

DON FULKERSON: The language is 7.216(C)(1) is fairly broad but I would be open to—I would be open to a proposal to establish a more responsive and effective sanction mechanism regarding just unwarranted or delaying appeals. I would be open to that, yes.

JUSTICE BRIAN ZAHRA: All right. Thank you.

DON FULKERSON: Thank you very much to the Court.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you.

DON FULKERSON: I appreciate it.

CHIEF JUSTICE ELIZABETH CLEMENT: Our next speaker is Michael Bogren.

MICHAEL BOGREN: Thank you, Chief Justice. May please the Court. We submitted a written comment on behalf of the Michigan Municipal League and the Michigan Municipal League Liability and Property Pool. Rather than reiterate what we have submitted in our written comments, I would like to address the personal aspect of this from the defendant's standpoint. Many of the comments that were submitted to the Court, that were in favor of rescinding the right to the claim of appeal, focused on the impact of litigation and the delays involved in an immediate appeal in a denial of immunity as it relates to the individual plaintiffs. There is an equally compelling situation that involves the individual defendants. In 40 years of practice, I have defended hundreds of lawsuits. The overwhelming majority of those involved governmental entities and individual governmental officials. [In] the overwhelming majority of those cases, the individual defendant has never been sued before. We see very few frequent flyers. This is an extraordinarily stressful event for every one of these individuals. When a trial court incorrectly denies summary disposition based on immunity, which the statistical data that a number of the responses have cited, is a

frequent occurrence. These individuals currently have the right to file an immediate claim of appeal to correct that error. That in turn allows the Court of Appeals to spare these individuals the stress, anxiety, uncertainty of the discovery process and potentially an unnecessary trial that wastes the time and resources of all the parties involved, as well as the courts. Many individual defendants are volunteers who participate in local government out of a sense of civic responsibility and a heartfelt desire to make our communities better places to live. I've represented city, village, and township board and council members, members of planning commissions and zoning boards of appeal, members of library boards, and members of historic district commissions. None of whom were paid for their service but all of whom were served—were sued as a result of their service. I've represented code enforcement officers sued by disgruntled landlords who took offense they were cited for allowing their tenants to live in squalor. I have represented numerous police officers and city attorneys sued by sovereign citizens who believe very literally the laws do not apply to them. Each of these individuals has been able to rely on the safeguard of an immediate appeal of right if a trial court erroneously denies their motion for summary disposition based on immunity. I respectfully urge the Court not to remove that safeguard. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Any questions?

JUSTICE MEGAN CAVANAGH: I just had—Mr. Bogren, I'm wondering if you could weigh in on the adequacy of, you know, the liberal application process and I recognize what Mr. Tountas said about, you know, the grant rate, right, of a relatively low for app for leaves compared to, you know, perhaps others. But I wonder how relevant that stat is when we're—by definition, all of immunity appeals are going as a claim of right and so the denial or the only grant of 20 percent of cases where—that don't deal with immunity, right? Don't have the concerns of, you know, prevent—of securing an early review of the immunity issues. There are many issues why the Court of Appeals may say you can go to trial. This issue, you know, can be reviewed later. I mean there are many reasons to deny leave and so I don't know how relevant this, the current stat is on the grant rate, is in evaluating what a grant rate would be if the immunity appeals were through the application process as opposed to a claim.

MICHAEL BOGREN: That's an excellent question, Justice Cavanagh. I wish I had statistical data to answer it. One of the things that, frankly, we were surprised to find out is that the Court of Appeals does not keep statistics on how frequently they grant or deny applications for leave to appeal. We had to do essentially, you know, an ad hoc survey of appellate practitioners around the state and I'm not comfortable telling you what percentage of apps for leave are granted but I am very comfortable in saying it's far less than the statistics demonstrate that the Court of Appeals reverses denials of

governmental immunity. So, I think, the simple answer is very similar to what Mr. Tountas said, which is when you leave that decision to two of three randomly selected members of a Court of Appeals' panel, there's simply no consistency in what a panel decides to review and what the panel decides not to review. And, in light of the reversal rate, I think that it is a poor substitute and is going to subject defendants to unnecessary litigation that they simply have no business being involved in the first instance. And I know that's an imprecise answer, Justice Cavanagh, and I apologize. But again, I just—I wish we had statistics to demonstrate but we don't. But I think everyone can agree that the Court of Appeals' rate of granting applications for leave to appeal, it is not very significant.

JUSTICE MEGAN CAVANAGH: Well, I wonder, and not to belabor this, but I wonder if the statistics that you and others have offered us on the reversal rate for governmental immunity appeals wouldn't perhaps inform the grant rate currently. You know, these are going through as a claim. They're not an app for leave. So, if these cases are more often than not, I think your stats are you're suggesting, based on the stats that you provided, more often than not those are granted. Wouldn't that suggest that perhaps the grant rate if these were going through the application process would be greater than it currently is for all types of interlocutory orders?

MICHAEL BOGREN: That very well could be, Justice Cavanagh. But it—I guess that kind of begs the question then. At some point, if they're going to grant the app for leave anyway, why remove the right to appeal?

JUSTICE MEGAN CAVANAGH: Well, it's a much shorter time process. You get that answer—both the plaintiff and the governmental defendant, gets that answer much quicker.

MICHAEL BOGREN: And if the answer is, no we're not going to grant the app for leave, then we still have to wait for the final order before we can appeal the denial of immunity.

JUSTICE MEGAN CAVANAGH: Okay, all right. Thank you for that. I appreciate it.

MICHAEL BOGREN: Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you for your time today. We appreciate it. Our next speaker is Solicitor General Ann Sherman.

ANNE SHERMAN: Thank you, Chief Justice Clement. Good morning, your Honors. I'm speaking on behalf of the Department of Attorney General. As my written comments indicated. our department strongly opposes the proposed amendments to court rules 7.202 and 7.209. Our comments were comprehensive, but I want to reiterate three quick points. The first is that there are enormous costs to the state and ultimately to the taxpayers in having to engage in protracted litigation, particularly the cost of discovery and the ever-increasing scope and cost of e-discovery. In cases where there is a viable claim of immunity, the financial costs are intuitive but there are costs to the taxpayers that are not as intuitive. And those include the disruption to our state agencies where we take employees away from their court—their core duties, duties that the taxpayers are paying for. There's also a cost to the state's ability to recruit and retain high quality employees to perform difficult tasks that private entities don't have to engage in. And there's also a cost to settlements that we might enter into that we would not otherwise enter into because we think we have a viable claim of immunity. The second point is that, as our written comments indicated, the state is using these court rules selectively. We're not asserting or appealing immunity in every case, and when we do assert immunity, we've usually been successful. And one thing I would add to that; I would address Justice Zahra's point about the layer of protection. We would not be opposed to a layer of protection that could prevent any kind of concerns about gamesmanship and improper uses of these rules. But it certainly is—that would be preferable to doing away with the automatic appeal and the automatic stay. The third point is that we anticipate that these rule changes will increase the caseload of the state and trial—state trial and appellate courts. I want to address quickly Justice Cavanagh's question about why the app for leave process, as liberal as it is, isn't—whether it's sufficient or not. I don't think it is and I think one of the big reasons for that, and this has been alluded to by other speakers, is that we now have court rules that are bright line. They are easy to administer; they are uniform. And you are contemplating a change to something that takes away that much needed uniformity. That uniformity is important for a lot of reasons. One is that it's important for the state, at the outset, to be able to look at a case and predict what might be happening in that case. And I—we don't believe that there will be prevention of delays through that process. Thank you very much.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Any questions?

JUSTICE MEGAN CAVANAGH: I do. Ms. Sherman, thank you. I particularly appreciate the comment that you gave in the summary of the 50 states and similar, and trying, you know, really I think with this—in looking at that, we're looking at like trying to get to apples to apples, right? And I'm not sure—I couldn't tell from the stats that—or the material that you provided, it appears to me that a lot of the states that allow for

an in—and the federal system, right?—that allow for an interlocutory appeal of an immunity order are—it's the exception to the more general rule that there are no appeals of interlocutory orders in general, right? That's certainly the case in the federal system. In many of the states, even if they allow it, it is still discretionary, which again is—keeps sort of leading me towards Michigan's app for leave process where there isn't a blanket rule that you can appeal an interlocutory order. And it is a discretion—it is a review by three Court of Appeals' judges, a substantive merits review of the assertion of immunity or the wrongful denial—the allegation of the wrongful denial. So, I mean, is that accurate of your understanding of sort of—do you know how many of those states, or do we have a relative comparator where they have an open appellate discretionary review system and yet they still allow a claim as of right for an immunity appeal?

ANNE SHERMAN: Yeah and, I apologize, we did not—it was difficult to even pull up the 50 states. We had to go state-by-state because there was no 50-state research tool. So, we did not gather that information. It's certainly something we could try to gather if the Court is interested in it, but—and I think it's mixed. I think states—some states are doing this statutorily, some states are doing it by court rule, some states, I think, have more liberal application process similar to Michigan's, and some do not. But I think it is telling that over half the states really understand the value of doing this on an interlocutory basis and trying to get this resolved as quickly as possible. And I think, coming back to the point about why our application for leave process isn't—is or isn't sufficient. I believe it isn't, because it comes down to the difference between an easily applied rule that breeds uniformity versus making a change to putting it in the hands of the application for leave process where you are going to have different panels approaching this in different ways. And that doesn't cast aspersion on any particular panel. It's just how it is. We have now a very easy to administer rule and you're going to take away that level of uniformity. There's going to be another level of briefing involved and it seems like a solution in search of a problem, you know. I'm still trying to figure out where the problem really is here and, you know, one thing I have heard plaintiffs' attorneys say is, well this is creating delays in our, you know, in some of our cases. But there's also the potential for delay with the application for leave process as well, and on the front end for the state when we're trying to predict what's going to happen with the case, whether we should—we're going to have to go to trial, should we settle? It, you know—it's much better to get that information as early as possible before we make decisions to spend the taxpayers' money to settle something that we think we could—we do have a viable claim of appeal. There are ways to protect the plaintiffs from—if perceived gamesmanship, I think, you know, Justice Zahra's comments that maybe we could have some protections built in, we would not oppose those. I think there are also tools that plaintiffs can use when something is up on appeal to say like this is—this—we're appealing the denial of governmental immunity, the government,

and the plaintiff can say—you know, file a motion to dismiss or a motion to affirm. I mean, there are tools already in place for the plaintiff to quickly combat our appeal if they think it is a frivolous appeal. So, for all those reasons, I don't see—I—this feels like a solution in search of a problem that I'm struggling to understand. And I think the ramifica—negative ramifications on government and on the taxpayers are enormous here.

JUSTICE MEGAN CAVANAGH: I think I have one more question. And it was raised by your comment of comparing or using an example of the appeal available in the federal system for an interlocutory denial in most circumstances of qualified immunity, right? The *Mitchell versus Forsyth* appeal of, you know, federal system, you don't get to appeal an interlocutory order by case law, *Mitchell versus Forsyth*, the federal circuit courts have allowed, or the U.S. Supreme Court has allowed, an appeal of a denial of qualified immunity. And again, sort of getting to that apples-to-apples, that is a very specific, in my practice and understanding of it, assertion of appellate jurisdiction, right? In that case, the appellant has to—in those type of appeals, the appellant has to accept the facts as found by the district court, or pled if it's a 12(B)(6) say, and say on appeal, I need you, appellate court to look at this because I will accept the facts even if I don't think those facts were actually supported by the record. I will accept those facts and I still am entitled to immunity. In contrast, in Michigan's appeal, because it is broader of immunity, an appellant can argue that that factual finding by the trial court or assertion by the plaintiff in their pleading isn't supported by the record. It's a broad re-look at, you know, the evidentiary standard under (C)(10) or something. I mean, am I correct in understanding that distinction between the two types of appeals and is there a basis for where perhaps, like the federal system, an appeal on a *Mitchell versus Forsyth* basis, may be warranted? Or why is Michigan broader or should be broader than what the federal system permits?

ANNE SHERMAN: You are correct that it's not an apples-to-apples, and that when we are appealing the denial of qualified immunity in the federal courts, we can only appeal something that is a question of law. So, if it is fact-bound, we have to wait until we have some protracted litigation or some, you know—usually we're entering into some discovery and then taking that appeal at a later date. But I think, you know, and I've thought about that distinction but I think one of the things is that when we are looking at whether to take an appeal of a denial of immunity or we're looking at even whether to assert immunity, we're evaluating as this, you know, as the state we're one of—we are the biggest single player here. We are looking at whether the case is fact-bound and we're not going to assert immunity and we don't typically assert immunity in a case that is fact-bound where the court isn't going to be able to decide the immunity issue until we do some discovery. And that—I think we try to make that point in our

submission that we are using these tools selectively. If there is a concern that governmental entities aren't using these tools selectively enough, I like Justice Zahra's suggestion that we put some protections in there. If they are used only for the purpose of delay or gamesmanship of some kind that can be corrected but we—that's something we take into consideration, is this a case that's fact-bound, because we know we're not going to be successful and we want these cases to resolve as quickly as possible. We don't have a reason to delay. We want the resolution just as much as the plaintiffs do. So, we take that into account and that's why we don't use the tools in every case.

JUSTICE ELIZABETH WELCH: Ms. Sherman, do you, I mean, would you agree that when stays go into place and they last for a year or more that that obviously—I mean, you said this is sort of a solution searching for a problem. I mean, I sort of find it compelling that the stay is difficult for parties.

ANNE SHERMAN: Well, I mean, I think that there's a balance there. The Court could certainly remedy this if it shows, I think, in a more effective way that balances the needs of plaintiffs and governmental entities by fast tracking these cases so that the stay wasn't in place for a year. But you know, there's that balanced against the enormous discovery cost that the state is going through, and now with e-discovery there are—even a simple case is very, very expensive, and it's not just expensive to our department. This is expensive for the people. It's the people that are going to pay for this ultimately and so even a simple case, even a case that might be frivolous, if we have to engage in discovery, it's expensive for the taxpayers. So that's the balance and I think you could—the Court, if it's concerned about that that delay for the plaintiffs—I think that you could certainly fast track these cases or fast track them on a case-by-case basis if not by a structural rule that applies to all.

JUSTICE ELIZABETH WELCH: Thank you and I agree. I recognize this is a really tough balancing act, and I appreciate that. Thank you very much.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you, Ms. Sherman. We appreciate you being here today. Our next speaker is Kevin Polston.

KEVIN POLSTON: Good morning, Honorable Justices of the Michigan Supreme Court, and thank you for your service to our state and the opportunity to speak on the proposed amendment to MCR 7.202. My name is Kevin Polston, superintendent of Kentwood Public Schools. In addition, I've previously served as an appointed advisor to Governor Whitmer regarding policy for K-12 education to navigate the COVID-19 pandemic. I'm here today to express my strong opposition to the proposed

amendment to MCR 7.202 that would change the rules for public entities, including school districts, the right of automatic appeal in cases that involve governmental immunity. Not only am I here today representing superintendents in Kenwood Public Schools, but I also speak in unison with the entire education community. There is broad-based support from school boards, organized labor, and school administrators to keep this rule in place. And when we're all able to come together in support of an issue, it's always for one reason, that's what we believe is best for our kids. As a public school district in the state, we're required by statute to educate each student in the communities we serve. And it's a privilege to do so. We're not able to pick and choose nor discontinue services because they come at an increased risk. This is markedly different from businesses who can decide which products or services to offer. Education shouldn't be treated the same as the other entities because the conditions are not the same. Our educators go into this line of work because they care about kids. Time and energy away from the classroom to participate in depositions, prepare for testimony, or be present for court proceedings takes their focus away from where it belongs. It also creates inefficiency in our education system. Our system is strained to adequately staff our schools under normal conditions and the potential for an increase in lawsuits or threat of lawsuits will tax the system further. We all learned during the pandemic that leaders have to make difficult decisions to keep our communities safe. School leaders made the best decisions they could with the information they had. Schools are currently facing challenges in the threat of litigation on topics such as books in our libraries. I never thought book bans would be a polarizing topic. But leading and operating schools, we know, are complex. I understand the decisions you make are also complex and there's competing interests. I urge you to keep this rule in place and allow our schools to keep our focus on the kids and families that we serve each and every day. Thank you for your service and the opportunity to speak on this topic today.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much for being here. Any questions? All right, our next speaker is Sharon Irvine.

SHARON IRVINE: Hello, your Honors. Thank you for the opportunity to speak to you today. My name is Sharon Irvine. I'm the superintendent of Southgate Community Schools. In my 25 years in Michigan schools, I've been a teacher, a principal, an HR director, assistant superintendent, and superintendent. And I'm here to urge you to continue to provide the immediate right of appeal when governmental immunity is denied to schools and every other governmental agency. Schools are governmental agencies charged with the responsibility to educate children, the heart and soul of our society. We are responsible for the education, well-being, and safety for more than 1098 hours of their lives each year. We stand in the shoes of parents during this time and make decisions that we—parental expectations, administrative rule, legislation, and

judiciary priorities. Every political conflict that exists in society plays itself out within the walls of our schools. We cannot escape our responsibility or avoid risk. We are uninsurable because litigation and threat of litigation are so high. The legislature anticipated that governmental agencies would need protection to carry out their functions and provided governmental immunity from suit and tort liability. The proposed rule changes to MCR 7.202 and 7.209 would deny us the right to have the matter of jurisdiction answered first before the heavy costs of litigation are incurred, there would—thereby denying us protection from suit because, unlike private institutions, schools are required to pass balanced budgets. Money to cover these unnecessary costs are pulled from what would otherwise be spent on children. Because these rule changes would separate from the federal rule of appeal, plaintiff attorneys would seek out Michigan state courts to advance their cases, weighing the odds of an uncontested ruling against governmental immunity, a ruling that's been overturned 50 percent of the time at least. The gamble would promote plaintiff-friendly settlements that shift money from taxpayers to attorneys. Finally, without protection for governmental servants, fewer would be willing to take on the role, providing another barrier to finding those willing to teach in Michigan. I urge you to honor the intent of the governmental immunity by allowing this question to be answered before encumbering any significant resources. Thank you. I appreciate the opportunity to address the Court.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. We appreciate you being here. Our next item and our last item for the day is item number 5, ADM file number 2022-03, proposed amendment of MCR 1.109 that would allow attorneys to provide personal pronouns in document captions and require courts to use those personal pronouns when addressing the party or attorney, either verbally or in writing unless doing so would result in an unclear record. And our first speaker on this item is Trent Collier.

TRENT COLLIER: Good morning and may it please the Court, my name is Trent Collier. I submitted a letter in support of this rule. I just wanted to highlight one issue for the Court this morning. We live in an era in which we are in desperate need of models of civil dialogue. As a Michigan lawyer, I believe one of the Court's core functions is to model what civil dialogue looks like. And one of the minimum requirements for a civil dialogue is that we address each other respectfully and that means using the names and genders that each of us believe are appropriate. This is something we all insist on and it's especially important in courts. And if there's any doubt about that just consider what would happen in a court if an attorney refused to call a judge “your Honor” or “Judge,” or if a party misgendered a judge. That would be a very, very short hearing. Everyone deserves the same right. Everyone, even if their

experience of gender or sexuality, differs from ours, from yours or from mine. And that's what this rule does. I think this rule sets a baseline that we need in order to have civil dialogue in this state, and that's why I'm grateful to the Court for considering it and I urge the Court to adopt it.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Julisa Abad.

JULISA ABAD: Good morning, everyone, and thank you, your Honor, for letting me speak. I'm somewhere else working where we're still required to wear a mask. So, my name is Julisa Abad. I'm a trans woman. I am the director of transgender outreach for the Fair Michigan Justice Project and I'm also a victim advocate for the Wayne County and Oakland County prosecutors' offices. Last Thursday, we lost another trans woman of color by the name of Asia Davis, which was also my long-term best friend of over 10 years. So, I'm really, really struggling right now. One is we know my community, specifically trans women of color, until a month ago, we're not included in Elliott-Larsen. Through the Fair Michigan Justice Project, we prosecute crimes that happen to LGBT community, specifically trans women of color. To date, we've prosecuted 38 capital crimes with 100 percent conviction rate. It has been astronomical for my community with building the bridge with police and changing the dynamic, but also letting them know that they're going to be heard, respected, and treated with dignity while their cases are solved. A lot of cases are now solved because my community feels comfortable in reporting crimes that have nothing to do with cases that we have. A lot of people—one of the barriers to justice is coming forward and reporting a crime. Something as little as pronouns and a name change might seem insignificant to someone that it doesn't affect, but my community does not come to court and re-testify or be re-traumatized if they know that they're not even going to be accepted or respected as their authentic self. Oh, again, I stated that we just got included in Elliott-Larsen. That means for my community, it was really, really hard to find medical services, housing services, and even shelter services. I have a name change program through Dykema Law Firm, GM, and Ford Motor Company where we've helped 242 trans individuals legally change their name with no cost to them. Again, it's been imperative in finding them employment, health care, and shelter systems. So, I asked the Court to please respect my community. Address them by their pronouns. Wayne County, also in our court system, is the first in the nation to have a trans inclusion policy, which is started through Kim Worthy, and it has been astronomical in changing dynamics and actually getting statistics on the crimes that happen to my community. So, please continue to support it and thank you guys for your time.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Judge Travis Reeds.

JUDGE TRAVIS REEDS: Thank you, Justice Clement. So, I am speaking on behalf of the organizations that include the Michigan District Judges Association, the Michigan Judges Association, the Michigan Probate Judges Association, and the Association of Black Judges of Michigan. And this is an example where all of our organizations—judicial organizations and the state came together to try to discuss and come up with a proposed change that incorporated the intent of the proposal. But looking at it from a more pragmatic and practical "how will the court function viewpoint," obviously from the number of comments, this proposal touches on some very polarizing political issues but we step back from all that. That's not our place or business. Our business is the functioning of the courts. And so, our proposal, starting out with the understanding that the canons already required respectful and courteous treatment of all litigants and participants, the addition that we proposed encapsulates that. It provides a little bit more and provides options, but it also gives discretion to the court to use other respectful means of address, including the person's name or their status, for example, defendant or plaintiff. It provides a lot of options that make the functioning of the courtroom more doable, I think, than the proposal that is on the table. And we would ask that the Court adopt our recommendation of a tweak to the suggested change because it will, again, ensure procedural fairness. It'll create an environment where all the participants feel they're treated courteously and with respect, but it also provides some limitations so that the court can still function in a business-like fashion. Thank you very much.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Will Bloomfield.

WILL BLOOMFIELD: May it please the Court, I'm general counsel of the Catholic Diocese of Lansing and I'm commenting today on behalf of my client, Bishop Earl Boyea. As our written comment explained, the Diocese of Lansing opposes the proposed mandatory pronouns rule. I'll restate a few of those reasons before addressing some final points. One, the rule contradicts the truth of human sexuality. If human beings exist as either male or female, a truth long recognized by Michigan law, in short the human body has meaning. It is false to deny that meaning. Two, the rule compels speech, which contradicts the First Amendment and applicable U.S. Supreme Court jurisprudence. Moreover, every American should be concerned about governments prescribing what speech is orthodox and what is not. Three, the rule burdens the free exercise of religion. The Book of Genesis states, "so God created man in his own image, in the image of God he created him, male and female, he created them." Jews and

Christians have believed this for millennia. Speaking particularly for Catholics, a Catholic judge should not have to choose between his or her religion and the court rule. Four, the rule would be difficult to adhere to because of the regularly growing list of pronouns, not to mention individual's own personally created pronouns. There's also the near certainty that bad faith actors would misuse the rule. I've reviewed many of the other comments. It's particularly striking to see lawyers, and even Sections of lawyers, ignore the significant First Amendment constitutional issues. Instead, comment after comment asserts the need for the rule as a simple courtesy or as a small act of tolerance or compassion. Yet even courtesy, tolerance, and compassion extend both ways. Where is the courtesy, tolerance, or compassion for those who oppose gender ideology and think it harmful for individuals and society yet would be compelled to affirm something they believe is false and even harmful. Other commenters have claimed that using someone's preferred pronouns is simply an application of the Golden Rule: Do unto others as you would have them do unto you. While most of us do like to honor another person's request to be called by a certain name or title, there are limits. No one can rightly expect another person to call him or her with the title of a judge or doctor or priest when he or she is not one. Nor can someone expect a person to call him or her by an offensive nickname. Likewise, no one wishes to be compelled to say something that contradicts one's sincerely held beliefs. This, too, is an application of the Golden Rule and while a person may prefer certain pronouns, it is far different to demand that others use one's pronouns or rely on the court to mandate those pronouns. In conclusion, the Diocese of Lansing opposes the amended court rule. In a free society, we persuade others of our views; we don't compel. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Timothy Denney.

TIMOTHY DENNEY: May it please the Court, I'm Timothy Denney and I'm chairperson of the Religious Liberty Law Section of the State Bar. I thank you for this opportunity to address the Court. While the State Bar supports this proposed rule, our section, respectfully, does not. We did submit written comments. At the beginning, this court solicited comments on this proposed rule, especially its constitutional implications. This Court was wise to be concerned. Those implications are strong, and they weigh in favor of rejecting the proposed rule. For example, in the 6th Circuit's 2021 *Meriwether* case, the court found that a religious public employee had stated a valid First Amendment free speech violation claim when he was punished for refusing to comply with a mandatory personal pronoun rule. The court relied on the long line of U.S. Supreme Court decisions on compelled speech doctrine. The First Amendment generally gives us not only the right to speak but the right to refrain from speaking. We do not force everyone to believe or speak the same thing. *Meriwether* indicated that

requiring public employees to use another's preferred personal pronouns is forcing certain religious employees to carry a message with which they do not agree. That message, that one's sex can be changed after birth rather than being determined by the Creator at conception, *Meriwether* indicated—the *Meriwether* Court indicated that was a message Mr. Meriwether was entitled to refuse to speak. The *Meriwether* legal framework for government employee speech is equally applicable here based on Supreme Court precedent. One, is the speech of matter of public concern? And the court said, yes it is, and that's applicable here. The second is the balancing test—the balancing employee's rights versus the employer's right to operate an effective workplace. That balancing test is not hard here. On one hand, we have the interest of religious judges and not being forced to speak things that violate their religious conscience. This Court has said that zealous protection of religious liberty is essential to the preservation of a free government. On the other hand, in this Court's judicial canon of ethics and standard jury instructions, it has mandated that judges and juries not considered gender identity in their decisions. The standard jury instructions indicate that gender identity is listed among the factors that this Court calls "irrelevant to the rights of the parties." If protection of religious liberty is essential to the preservation of a free government and gender identity status is irrelevant to the rights of the parties, then we should not force judges to violate their religious conscience by requiring them to repeatedly emphasize litigants' gender identity status. Thank you. It would be my pleasure to answer any questions.

JUSTICE ELIZABETH WELCH: Counsel, I have a question. We heard from Judge Reeds, the proposal that the various judicial groups put forward with an option of other language, sort of gender-neutral language. Would that be a problem in your mind constitutionally? If there were another option for judges?

TIMOTHY DENNEY: I'm not sure what they mean by the gender neutral—neutral—

JUSTICE ELIZABETH WELCH: Well, I think they mean, like for example, I just called you counsel or Attorney Denney. You know, you can call people "defendants" or "plaintiffs" or "attorney" without using pronouns.

TIMOTHY DENNEY: That would be helpful, and I would note the particular rule that we have in front of us, the proposed rule, does not seem to give that direct option to judges on the basis of their religious convictions. It only allows them to choose the litigant's name or other respectful identification if, in fact, it says it would help ensure a clear record. Religious judges ought to have that option off the top, not just if it makes the record more clear. I don't know any circumstance where referring to a person's

pronoun would make the record more clear than using their name itself. I do believe it would be helpful to allow those judges that have conscience objections to use gender neutral identification.

JUSTICE ELIZABETH WELCH: Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Heidi Naasko.

HEIDI NAASKO: Good morning, your Honor. My name is Heidi Naasko and I am a member of Dykema Gossett and pro bono counsel there. Part of my role is to oversee a name change clinic for low-income transgender community members in Wayne, Oakland, and Macomb Counties. Since approximately 2017, I have personally represented and supervised attorneys representing over 225 transgender people seeking a name change in Michigan courts. I wholeheartedly support the proposed changes to Rule 1.109 because it will provide consistency and guidance to courts, staff, and litigants about pronoun usage within its courts. Unfortunately, I have firsthand seen the impact of misgendering litigants in Michigan courts. It has caused embarrassment, humiliation, and panic with—to the impacted party. It is ironic to have witnessed this in a court since Michigan's law requires a court appearance to obtain a name change to avoid these legal—those public humiliations, and people who are requiring that the judicial staff would insist on using a dead name or incorrect pronouns in the court proceedings related to a name change. This proposed rule, if adopted, would provide a simple standard for those working and interacting with Michigan courts and would be consistent with the Michigan Code of Judicial Conduct, which requires both judges and court staff to treat litigants with both courtesy and respect. The concerns by some in other comments that this would create a never-ending list of pronouns requested is overblown, and that is supported by research. A recent survey by the Trevor Project of over 40,000 youth indicated that 96 percent of those youth preferred common pronouns: She, he, or they. This is also supported by my personal experience in representing this population over the last several years. Ensuring equal and safe access to the courts, to the judicial system, for all Michiganders, regardless of gender identity or expression or other protected characteristic, has been a paramount concern for this Court. This amended rule will go a long way to bridge those gaps felt by members of the transgender community. And for those reasons I support this amendment. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Daniel Beitz. I apologize if I pronounced that incorrectly.

DANIEL BEITZ: It is "bites" [ph]. Thank you, Justices. Thank you for the opportunity to speak. I appreciate all of the efforts on behalf of minority groups, the expansions of minority rights, and so on because I am, too, a minority. I have—I'm disabled. I have a visual acuity of zero and I have functioned as an attorney for 30 years. I now work for a small college, and it is essential to continue to promote the rights of those protected groups. But I'm also a member of another protected group and that is a group of individuals called people of religious faith. And I have the protections afforded to me under the First Amendment, which are the oldest protections granted to anyone in the United States as far as I know. Yet I often, in that protected class, feel pretty left out. I, like Mr. Bloom[field] and another of the speakers, accept the sacred—as my sacred text the Christian Bible. That sacred text, in my reasonable interpretation going back thousands of years and in the reasonable interpretation of a lot of others, does not accept transgender ideology, does not permit me to accept that a person's sex can be changed, and it never will. This is not something that's going to change. This is a religious conviction that I would know that progressive thought and societal development will not change. This rule requires judges and eventually attorneys because, I think it's fair to assume that judges are going to say, "if I have to—if I'm going to do this, you know, this is going to be the rule in my courtroom," and the judges have control over their courtroom. But this would require judges and potentially attorneys to address a person or make reference to a person in a manner that compels speech contrary—directly contrary to their religious beliefs. Indeed, this would—this rule in essence compels judges and very likely attorneys to publicly support LGP—LG um BT ideology by requiring us to use these pronouns. I, for one, simply cannot do that. We do not further the expansion of minority rights by promoting the inclusion of some groups at the expense of others—

CHIEF JUSTICE ELIZABETH CLEMENT: Mr. Beitz, Mr. Beitz, I'm sorry, I'm sorry for interrupting. Your time has concluded. Thank you very much for being here today.

DANIEL BEITZ: All right.

CHIEF JUSTICE ELIZABETH CLEMENT: Our next speaker is Kim Cramer.

KIM CRAMER: Good morning, Justices. Thank you so much for the opportunity to comment on this proposed court rule. My name is Kim Cramer and I'm a lawyer at the Michigan Legal Help Program. We provide a website with self-help resources to help the many Michiganders who have to face legal problems without lawyers. Michigan Legal Help strongly supports this proposed rule. It's a commonsense addition to the rules and will make courts more welcoming and accessible, especially for self-represented people who may not know how to approach providing their pronouns to a

judge or how to correct a judge who uses the wrong pronouns. This issue is of particular importance for self-represented people because of the huge power imbalance between a self-represented person and a judge. Self-represented people don't have a lawyer to buffer their interactions with the judge or to advise them on whether and how something might be appropriate to provide. Most of us at Michigan Legal Help work closely with judges in various statewide work groups and committees, and from these interactions we're very sure that the vast majority of judges in Michigan want to use people's correct names and pronouns just out of a basic sense of respect for other people. But we also want to highlight that giving litigants space to provide pronouns and ensuring that judges use them is also in furtherance of creating courts that value procedural fairness. Procedural fairness is the concept of treating litigants with dignity and respect, to help people recognize that the courts are fair even if the outcome of the case is not what they hoped. Research shows that a litigant's sense of procedural fairness increases the likelihood that they will willingly accept and comply with court orders. And so, rules like this one not only ensure that people are respected but they also make sure that courts run smoothly and that judges maintain authority over their courts. We thank the Court for proposing this rule that would allow litigants a clear way to provide pronouns in the same way they provide other identifying information such as their name. Thank you again for the opportunity to comment and if you have any questions, I'm happy to answer.

JUSTICE BRIAN ZAHRA: I have a question. Judge Reeds recommended or is a propo—supporting a proposal that would allow a greater deference to the court to use gender-neutral ways to identify parties. Is that sufficient or do you want a rule that would actually require the use of pronouns?

KIM CRAMER: I support a rule that would require the use of pronouns if a litigant provides them because this rule does say that if necessary for clarity in the record that the court can use other respectful means of addressing litigants.

JUSTICE BRIAN ZAHRA: But only to make the record clear.

KIM CRAMER: Right and, to me, that is the only important reason not to use someone's actual pronouns would be to make a clear record.

JUSTICE BRIAN ZAHRA: So, you would have a rule that would, for example, if a judge in the course of litigation referred to counsel Smith and counsel Jones to be subject to disciplinary action because they didn't use preferred pronouns as opposed to identifying counsel by name?

KIM CRAMER: No, I think under the current rule, using those terms of address would be permissible because it's creating a clear record. I don't interpret the current rule as requiring some drastic shift in courts such that before the rule I could be addressed as Kim and after the rule I may only be addressed as she and her. To the extent that the rule might imply that names and other salutations may not ever be used, I think that that interpretation to me is not the commonsense interpretation of this draft of the rule.

JUSTICE BRIAN ZAHRA: Are you aware of any instance in which a litigant provided preferred pronouns and a court used the opposite pronouns intentionally, as opposed to going to just gender-neutral references to the counsel—to the person who's identified pronouns?

KIM CRAMER: So, I want to provide a big asterisk here, which is that this is the only Court I attend anymore and so I don't spend a lot of time in trial courts. I do talk to a lot of self-represented people, and I have not heard of this happening. And again, that tracks with my experiences in dealing with judges, that I really do have a sincere belief that most judges would use someone's pronouns rather than intentionally misgendering them or using a dead name. And I think this rule again is very commonsense and, in the same way the court rules allow us to provide our name in the caption so that judges know how to refer to us rather than just counsel or plaintiff, that the rules can also provide a space for people to give their pronouns so that judges know what pronouns to use when addressing that person.

JUSTICE BRIAN ZAHRA: Okay. When we started you said you would prefer that the judges use the pronouns as opposed to a gender-neutral identification. What would you say to the judge who holds a sincerely held religious belief that they simply can't do that and the First Amendment right not to do that? What would you say to a judge in that situation?

KIM CRAMER: So, I think for the small minority of judges who would insist on misgendering someone and insist that that is their legal right, my bigger concern is whether or not a judge who denies central aspects of someone's personhood could then fairly judge the person's case. So, there are mechanisms in our courts for recusal if you have the sense of bias around a party, that once you learn some information about their identity that colors your view of that person such that you don't believe that this person exists in the way they say they do. But you know, on the religious aspect of it, I'm not convinced that there is a reasonably held religious basis for misgendering a person in court and for a judge doing it in court.

JUSTICE BRIAN ZAHRA: You said misgender. I'm saying instead of using mandatory—I understood you would mandatorily prefer—you want to make—you want a situation which the court is required to use the identified pronouns as opposed to gender-neutral pronouns and I'd say to a judge—I'm asking what would you say to a judge who says, "I don't want to use the identified pronouns; I will use gender neutral terms"? Is that misidentification to you, using gender-neutral terms?

KIM CRAMER: Using a general gender-neutral term that is acceptable by the person, I don't think is misgendering. I'm not—

JUSTICE BRIAN ZAHRA: But why does it have to be acceptable to the person? If you're an attorney and you're attorney Smith, why does it—why does attorney Smith have the right to say, "no, I want to be she/her, not attorney Smith"? Why would that—why should that be?

KIM CRAMER: I'm sorry. I thought you were referring to—so, for example, there's attorney Smith is gender-neutral in a different way than, for example, the pronouns "they" and "them." So, someone may not identify with using the pronouns "they" and "them" and might prefer the pronouns "she" and "her." Again, I think the rule as written addresses this and would allow a person in court to be referred to as "attorney Cramer" because it allows a clearer record.

JUSTICE BRIAN ZAHRA: And if I were to say, I'd like to strike any reference to a clearer record, would you oppose that or would that be fine?

KIM CRAMER: I think it would depend on any other changes that existed to the rule, but I think that a court rule that allows someone to provide pronouns, that says the court should use those pronouns or other respectful means of address would be a fair rule.

JUSTICE BRIAN ZAHRA: Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is William Wagner.

WILLIAM WAGNER: Thank you, Chief Justice. May it please the Court, I'm speaking on behalf of the Great Lakes Justice Center today and I also serve as a distinguished chair of Faith and Freedom of Spring Arbor University. I also chair the Religious Liberty Law Section and we've already submitted our written report there. And I appreciate Mr. Denney's testimony. We believe that every human being is made in the

image of God and is therefore worthy of being treated with dignity and respect. And so Madam Chief Justice and the Court, nobody here testifying in opposition to the Court's proposed speech rule does so out of any kind of hate or any kind of disrespect. We do so as a matter of deeply and sincerely held conscience. To fairly judge the case does not color, you know, the person's case on how they view the person because every person here views them with dignity and respect. Yesterday, I attended a hearing the leg—in the legislative branch of this government. Now a bill which could make the conscience and expression, that you seek to compel in the Court's speech rule here, a felony. So, this is where it can go if you enact the code here, the speech code as proposed. We'll be back here on another day with new proposals to ban lawyers from serving on the bench who are members of groups or organizations such as churches or mosques or synagogues who don't adhere to the ideological sexual orthodoxy of the day. Selective—the test of a properly functioning Republic is not whether the government protects the speech and religious rights with which it agrees. It's whether we will protect the speech and religious rights and liberty of those citizens whom it does not agree with. Freedom of conscience is a fragile thing. I personally have experienced what happens when nations and institutions travel down paths prohibiting expression. I've held in these hands, the ashes of many who died because of their conscience as a diplomat. I also worshiped in a church where hundreds of men and women and children were slaughtered as they sought sanctuary and wanted to express their conscience. In addition, I can tell you many stories of persecution grounded in the exercise of expression, and I'll note just one as I close here. A member of a diplomatic team that I led was brutally tortured, almost to the point of death. Why? He exercised freedom of conscience and stood up for good governance under the rule of law. And after these and similar experiences, I vowed never to remain silent. For all the reasons in the Religious Liberty Law Section's brief and for what I've just stated here, I urge you not to pass or at least provide a provision for religious accommodation here. Thank you for your time.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Any questions?

JUSTICE ELIZABETH WELCH: Professor Wagner, I'll ask you the same question I asked attorney Denney. The notion—and I think Justice Zahra has been asking about this as well, our—many of our judges' associations have put forth a proposal that basically says that the judges could use gender-neutral terms in lieu of, I guess, the preferred pronouns. I'm wondering what your thoughts are on that.

WILLIAM WAGNER: Well, depending on how it's written. I have not seen the proposal but I don't think anybody has any objection to referring to "counsel Smith" or to, you know, to the "plaintiff" or the "defendant," you know, and so I do think, you

know, it's important that we remember that the Constitution serves as a limitation on the exercise of government power and, you know, over all the comments that I looked at, it seems like, you know, we as attorneys have forgotten these first and most permanent principles that, you know, that whatever we do and I like the way you explained it, Justice, but whatever we do and how we do it, it has to be understood that not only are we doing it because it's the right thing to do because we want to treat people with dignity and respect but we're also doing it because the Constitution requires it. And no one that is exercising this sincerely held religious conscience has any bias or should have to be recused any more than anybody that's using those pronouns should have to be recused, you know, if they do it, if they use those type of things and so again I'll come back to the most important thing, I think, if we do it is, is it done in such a way that recognizes the Constitution, serves as a limitation on the exercise of government power and therefore it needs to be accommodated and let's just do it in a way that does that at the same time treats everybody in a courtroom with the dignity and respect that they deserve.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Scott Bassett. Welcome again.

SCOTT BASSETT: Thank you. I am speaking in support of this proposal, and I want to go back to when I was a brand-new lawyer. I think I'm almost a half-decade older than anybody on the Court and been practicing in five different decades and in the early 80s, I distinctly remember an appearance in our second largest judicial circuit. And one of the lawyers was addressing the court and the judge wanted to know how to address her. And he was limited to, "are you a Miss or a Mrs.?" and she responded, "well, I'm a Ms." And the judge said, "no, there's no such thing as Ms.; there's only a Miss or a Mrs. Either you're married or you're not married." To that judge, it was a binary world. I think we all know that it's not a binary world. We look around and we see our friends, neighbors, colleagues, and family members for many of us who are trans or non-binary or heterosexual or homosexual, you know, across the broad spectrum. But the fact is that they're lawyers and litigants in our court system and they're entitled to be addressed in a way that is respectful. You know the issue here is about pronouns. Ms. is not technically a pronoun from a grammatical sense. It's a title. But I think it presents some of the same issues here. Where are we as a profession, as a court system in recognizing the broad diversity of the people who not only appear in front of us as litigants but also those who are advocates on their behalf? And I do think it's time that we recognize that and allow people to present to the court their preferred pronouns and ask respectfully that they be addressed in that way. So, I do support this proposal. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Justice Marilyn Kelly.

FORMER JUSTICE MARILYN KELLY: Thank you, Chief Justice Clement. Justices, it's my great pleasure to appear before you today to urge your adoption of the proposed amendment to MCR 1.109. Fifty-two years ago, I was a new lawyer struggling to practice in Michigan courts and one morning I experienced the exact situation that Scott Bassett described to you. I appeared before the august Oakland Circuit Court to argue a motion before an experienced and a respected judge. He knew a little about me at the time except from the fact—for the fact that I was married and that I'd kept my maiden name. I began my argument to the court, "your Honor I'm Ms. Marilyn Kelly appearing on behalf of the plaintiff." The judge stopped me short, "counsel in this court there's no Ms. or Mrs.—there's no Ms. Ms. is an invented word," he said, "it's a mere passing fad. Here, you're either Miss or Mrs., which will it be?" Well, consider the problem that it presented for me. I wasn't "Miss Kelly" because I was a married woman. And I was not "Mrs. Kelly" since my husband's last name was not Kelly. I was neither "Miss" nor "Mrs. Kelly," and I had a legal right to retain the name Kelly. "Ms." was just right but the judge forced me to use a prefix that didn't fit me and this misfit made me feel like an outsider at a time when it was already hard for a woman to win the confidence of clients, when so few women practiced law in the courts. So, it's easy to draw the parallel of my situation then with the use in the courts today of pronouns that don't fit people, pronouns that make people feel disrespected, that make them feel less than equal in the eyes of the law. How can we expect a person who feels they are transgender to believe their arguments receive the same credibility as those of straight people in the minds of judges when judges refer to trans people with pronouns that don't fit them? So, some say we can't use "they" or "their" when the antecedent is a single noun. They say it's bad grammar. Well, we all know that language is changing all the time. When I teach in law school these days, I frequently hear students say or write something like this: "If a person commits murder, they violate the law." I no longer correct them, saying "they" is a pronoun modifying a plural noun; a person is a singular noun; you must use "he" or "she," not "they." I don't make that correction because I realize language usage has changed. "They," to modify a singular noun, now is acceptable English. Likewise, "they" and "their" are acceptable pronouns for an antecedent that is a single person's name if that person feels "he" or "she" does not fit them. Surely, any judge who's made uncomfortable with this usage change has the ability to rephrase their oral statements from the bench or their written opinions to avoid perceived grammatical errors, and surely they need not feel compelled to use pronouns they feel are contrary to their religious beliefs the way this amendment is worded. So, in the interest of showing respect evenly to all litigants and attorneys, and in the interest of ensuring that trans people who appear before our courts do not feel

that the Scales of Justice are unevenly balanced against them, I urge you to adopt the proposed amendment to MCR 109.9—101.—1.109. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Any questions? Our next speaker is Jay Kaplan.

JAY KAPLAN: Good morning. My name is Jay Kaplan and I'm the staff attorney for the ACLU of Michigan's LGBTQ project. We, along with numerous Michigan LGBTQ organizations, submitted a written comment in support of the proposed amendment to rule 1.109. To us, the proposed amendment is about common sense. It's about common decency. Our courts are supposed to be open to everyone as a way to access justice. Being treated with courtesy by court officers and employees regardless of one's gender identity or gender expression is part of providing that access to equal justice. The appropriate use of a transgender person's pronouns in courts acknowledges the existence of transgender people, aligns with medical and scientific consensus, and promotes respectful treatment of all persons before this Court. At this critical time, when Michigan judiciary is investing in a renewed commitment to equity and inclusion, the proposed amendment should be adopted. No one would question the propriety of referring to cisgender litigants with appropriate male or female pronouns. A pronoun is not merely a preference but a statement of fact for all people regardless of their gender. One of the things that we provided in our comments was the degree and breadth of widespread discrimination against transgender people, including the fact that in this year alone 400 bills have been introduced in state legislatures that would take away rights or would prohibit equal treatment of transgender people. And unfortunately, that also extends to discrimination against transgender people in the courts. In a survey conducted by Lambda Legal, 30 percent of transgender respondents reported hearing negative comments about their gender identity or sexual orientation in court. Lambda reports that transgender litigants often hear that they that they've been treated disrespectively [sic] by judicial officers, including experiences of being mocked, misgendered, turned away, denied appropriate legal representation. We know of judges who've laughed out loud in open court because a transgender person asked for the respect of being addressed with their correct pronouns and their correct name. Giving the mis—given the mistreatment of transgendered people in courts, it should come as no surprise that Lambda's legal survey—survey also showed that only 28 percent of transgender litigants trust the courts to provide fair treatment. Overall trust in the courts was found to be lower than trust with the police or significant harassment and mistreatment also occurs. The proposed amended court rule is an opportunity for Michigan courts to rectify this situation by treating all people, including transgender people, with respect and dignity accorded to other litigants. This is commonsense, and this is the right thing to do. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Any questions? Our next speaker is Jey'nce Poindexter. Did I pronounce that correctly?

JEY'NCE POINDEXTER: No, it's okay. This is Jey'nce, your Honor. Good morning. Thank you for having me. I appreciate sharing space, and I thank all the Justices for your time and everyone who's attending today. My name is Jey'nce Poindexter and I have the privilege and the honor of being a national business advocate, but I'm also a case manager for the Ruth Ellis Center and I'm the vice-president of Trans Sistas of Color Project. Aside from that, I've done countless hours and put in efforts to make sure that our local laws in Detroit and also our broader community in Michigan include all Michiganders and that's what this effort is and I speak in support of it. We know that it has allowed litigants to come and have faith in our judicial system, and also encourage them to help navigate the judicial process, which our community members are often discriminated against and often feel like that they do not have a place to arrive. It is common courteous [sic] and it also costs us nothing to do that as a people, as a society, or a community. Why is it that religious persecution is always used to slice the rights and liberties of people instead of bringing them together, which is the intent of Christ. And I'd also like to urge anyone who feels that transgender is just this nuanced term that it should come about to research the term "eunuch" in the Bible. And they are also referred to as two-spirited people. That's a more native term. And so, we see the footprint but we also see the efforts in the erasure. And the fact is that we're all Michiganders and we are taxpayers and we are people. We are siblings and we all deserve the right and the liberties that are also found laid out in the Constitution. Thank you so much. I appreciate the ability to share space with you all and God bless.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Any questions? Our next speaker is Angela Tripp.

ANGELA TRIPP: Good morning, Justices. Thank you so much for the opportunity to comment on this proposed court rule. My name is Angela Tripp and I'm here today on behalf of the Michigan State Planning Body and the Legal Services Association of Michigan. Together the members of these two organizations represent tens of thousands of low-income people in Michigan's courts each year. The written comment we submitted was truly a group effort, reflecting input from several different members of the two groups and included a few examples, among many that could have been provided, of clients whose experiences of—whose experience of our justice system would have benefited from the rule change that has been proposed. We wholeheartedly support this proposed amendment because it gives those who appear before the court the opportunity to easily and clearly notify the court how they wish to be addressed and because it lays the groundwork for consistency across courts all over

the state. Many people who stand before a judge, particularly the clients that we represent and see representing themselves in the courtrooms where we practice, come from already marginalized communities. When court staff use the wrong pronouns, it further marginalizes them and sends the message that they don't belong. It also feeds the already existing imbalance of power between judges and lawyers and between parties and opposing counsel or between litigants and judges. This increased imbalance of power and perceived lack of belonging diminishes procedural fairness and has the potential to undermine the public's perception of the court's integrity, independence, and legitimacy, and, as you heard from Jay Kaplan, has already done so in many cases. Requiring judges and others in the courtroom to use the pronouns provided when using pronouns at all or to use other respectful means of addressing people if needed for clarity in the record promote civility as well as procedural justice. It also increases access to the courts because it has the promise of enabling people to fully participate in court cases where they find themselves. Being misgendered, whether intentional or not and whether it comes as a surprise or not, sets off a number of emotions and reactions, including feelings of disrespect, invalidation, dismissal, alienation, among others. None of these bolster the confidence, comfort, or concentration that is required to meaningfully participate in a court hearing. I share this from my own experience as it has happened to me a number of times in my life, although I'm sure not as many as many of the people for whom this court rule is most important. Some of the comments pointed out that additional modifications to case management systems and other tools need to be made to fully effectuate this rule, and we hope those changes will be forthcoming. Other comments supported the rule with proposed edits. We hope that even if this—if what was published is not the perfect version of the rule, that the spirit of the rule would be preserved in the final version. Perhaps language about a rule stating if pronouns are used the less—the listed pronouns must be used is a potential compromise. Whatever you do to give courts the requested clarity while also ensuring that everyone who appears before a Michigan court will be treated with the civility dignity and respect that they deserve is the right answer. Thank you for your attention to what is a minor detail for courts but can mean the world to the individual standing at the podium or in the witness box. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Angie Martel.

ANGIE MARTEL: Good morning, your Honors. My name is Angie Iglesia Martel. I'm the chair of the State Bar of Michigan LGBTQ Section. I'm also a queer Latinx and two-spirited indigenous person. My pronouns are “they”—they're not my preferred pronouns; they're who I am and they're my pronouns—and it's “they.” Our section submitted lengthy reasons why we believe this amendment and proposed rule is vital to

the access of justice for all LGBT people—LGBTQ people and vital to the access of justice mandates of this Court, vital to the mandates of the Elliott-Larsen Civil Rights Act, vital to diversity, inclusion, and equity in our courts, and it's vital to tearing down the barriers of systemic marginalization of LGBTQ people, especially transgender and non-binary. Today I'm going to speak to you from a place of the heart. It's really—I want to highlight—the greatest issue I want to highlight is we all, you know, go with the promises you're going to have your day in court. But your day in court is really how you authentically show up. So, by engaging in this—in having this court rule apply, we are in in compliance with that. I want to also point out that I practiced in New York, Massachusetts, the federal court of Puerto Rico. And states like Washington state, New York state, California, many courts, and New Mexico are becoming more and more inclusive. So, this is not a new phenomena, and it's really important to see how Michigan will show up. The court rule here is a very narrow court rule that is not—it's not compliance [sic] with the other jurisdictions but we support the fact that it's being present and we are grateful that it's being present. One is—so two issues for me that I'd like to bring out is gender inclusivity in the court is not a new concept. For the courts, it is something, you know, that we are—that is necessary for the courts to be impartial, accurate, precise, fair, and inclusive. I want to talk about safety because, as a Harvard educated attorney admitted to many courts, including the U.S. Supreme Court, at times I feel that I'm afraid for my clients in the Michigan courts. How will they be treated in the courts? Will they receive the respect and dignity and access to justice? Will the process be demeaning and traumatizing. In family law cases, will this treatment, you know, forever rupture bonds by the way that the court handles who they are authentically? How can I—what role can I play to make sure that this—that the courts are educated on with my case. Rather than worrying about my case, I worry more about the other pieces of it. So, I want to address this quick issue about compelled speech. We all know that the compelled speech doctrine of the First Amendment is not an exclusive, and we disagree with the position. The argument, however, does not have a foot to stand on for what it would enact would be rate—gender discrimination. And we have seen historically that religion has been used to discriminate in other facets. I'm sorry. I'm out of time.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Any questions? Our next speaker is Christine Yared. Did I pronounce that correctly? Oh, you're on—you're on mute.

CHRISTINE YARED: It's "Jared."

CHIEF JUSTICE ELIZABETH CLEMENT: "Jared."

CHRISTINE YARED: Yeah, thank you. I serve on the State Bar's LGBTQA section and I appreciate being—having this opportunity. Opposition to this proposal is not about pronouns. It's about the fact that an increasing number of transgender people are living out authentic lives and for many this radically challenges their understanding of gender. Most judges and lawyers have not had a reason to think about transgender identity in depth. This proposal promotes education. In the comments, some judges express concerns about frauds. This concern is extremely troubling. Judges do not have the authority or the ability to take physical stock of litigants and draw conclusions about their gender. People cannot identify a person's gender by looking at them. Many have interacted with transgender people that they wrongfully assumed are not transgender. Some because of their height, weight, body shape, and features can easily pass. Some will by necessity present closeted in court. If gender is relevant to a case the parties must provide evidence and a judge's finding must be based on the evidence, not on a visual inspection or their assumptions. The proposal does not violate a judge's freedom of religion or compel speech because it does not compel the use of pronouns. In addition, consider this: The Catholic Church condemns divorce. Catholic judges are required to sign divorce decrees and are forced to state words granting divorces. Appellate judges affirm them. Yet judges who do not object to granting divorces now object to a pronoun rule. This calls into question the motive of such claims. Is it primarily about religion or discrimination? Some judges asked, what if a person's pronoun sounds like the word "Nazi" or "Hitler"? The answer is, do not use it. MCR 1.105 requires judges to interpret the rules to secure justice. Some asked will they violate the rule if they make mistakes. No, treat it as if you mispronounce their name. The rule is simple. It's about respect. And finally, in court we often and typically use words "plaintiff," "defendant," "counsel." We use the person's name. Pronouns only apply when you're referring—when you're talking to a third person. This does not compel speech. I urge you to adopt this proposal. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Our next speaker is Marcia McBrien.

MARCIA MCBRIEN: Yes. Good morning, Justices. Marcia McBrien on behalf of the Catholic Lawyers Society of Metropolitan Detroit, which is affiliated with the Roman Catholic Diocese Archdiocese—excuse me, of Detroit. We oppose this proposed rule change and, as the Court requested when it published this ADM, we addressed the constitutional implications, concluding that this proposed rule is, on its face, an unconstitutional attempt to compel speech and as well as for its incursions on the First Amendment free exercise clause and the freedom of worship and religious civil rights clauses of the Michigan Constitution. Because those issues have already been dealt with by Mr. Bloomfield and Mr. Denney, I'm not going to go into more detail. But I am going

to try to address some of the comments that have been made both online and during this hearing. I echo Mr. Bloomfield's disappointment that the supporters of this rule in most cases did not make even a slight attempt to address the First Amendment issues. Instead, many of the supporters just behave as if the First Amendment did not exist or had no application. I would note that to the extent that the argument is engaged, it goes something like this: The Michigan Code of Judicial Conduct overrides the First Amendment rights of judges (and I would add in, by implication, court staff because the rule says "courts;" it is not limited to judges) and that therefore judges are required to use transgender and non-binary persons' declared pronouns because to do otherwise will inflict emotional harm and interfere with the impartial administration of justice to these litigants. So, what I'm seeing here is a conflation of speech with discrimination. I would point out that neither *Grievance Administrator v Fieger*, 436 [sic: 476] Mich 231 (2006), nor *Estate of Grable v Brown*, 257 Mich App 96 (2003), which had been cited in support of this proposition that judges have vastly curtailed First Amendment rights. Just—there's no applicable—applicability. *Fieger* is a judicial one-off. And Justice Zahra will recall *Estate of Grable* because he was on the Court of Appeals' panel in that case. I'm not going to belabor it. The carve out about using individual's name or other respectful means if doing so will ensure a clear record, that's not a solution because that's the only exception allowed. Finally, I would note the caveat accompanying the ADM that adoption of a new rule or amendment in no way reflects a substantive determination of this Court. I don't think anyone will buy that, with respect. Clear throwing in with one side of a fraud cultural issue is how my colleague in the Diocese of Kalamazoo put it. Thank you.

JUSTICE RICHARD BERNSTEIN: Hey, good afternoon. Just a quick question. I'm going to ask the question that basically everybody's been asking and I think what I'm sensing is that the Court's trying to grapple with this compromise that the judges have put forth. And I guess the question I would have is, I'm just going to ask you the same question that basically, you know, everybody's been asking, what are your feelings about the comp—the proposal that was put forth by the various judges' associations.

MARCIA MCBRIEN: Well, I think first of all, I think you need to listen to your bench—to your lower court benches because they're going to have to deal with this, right, with respect, much more than you folks will. So, you know, here's what's troubling to me about the proposal put forward by MPJA and, you know, and MJA and so forth is that it gives house room—it acknowledges an ideology and, you know, is—and the way it's worded, essentially it almost returns you to the current status, which is to give judges discretion, which is what they should have in the management of their courtrooms. So, if you'll notice the way the judicial associations' proposal is worded, they can use the pronouns, and they can use other respectful means. And it's sort of, I don't mean to

belittle it, but it's really almost—it's a return to the status quo because that's what we have right now, is judges have discretion. So, you know, under the rule as written currently, I think a judge would have discretion to recognize, you know, the asserted pronouns or to use other respectful means. So, I don't see, other than being a nod toward the issue of respect and inclusion, that the judicial associations' proposal accomplishes anything more than what you already have. And, you know, and I would also point out, and this departs a little bit from your point, Justice Bernstein, but it's a point that I think needs to be made. That when you look at the comments from judges in the trial courts and the Court of Appeals, you don't find anybody who has come out in favor of the rule as written. And I think that's for a very good reason. I think that's because the jurists are in the best position to see where the abuses are going to come from, if people are going to make exploitative use of the proposed rule. And so I think you need to listen to that. You know, it's, you know—that's why you have this public administrative process and the comments process is that, you know, there may be issues that the Court hasn't thought of or needs to explore so I would urge you to listen to your bench. You know, they are—the only judge I'm aware of who came out in favor of the rule as written is a chief judge of a circuit court and later on walked back that endorsement to a degree because she said she heard from other members of her bench who disagreed with her support. So, you know—so that's what I would say. I would say, listen to your bench.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Appreciate it. Our next speaker is Susan Keener.

SUSAN WILSON KEENER: Good morning, your Honors, and thank you for allowing me to—opportunities to speak here today. I will at first give you brief—my introduction that I am a solo practitioner from Grand Rapids, Michigan. I've been in practice over 38 years, and I practice in the areas of family law and family law mediation. I'm here to express my voice, my views in support of the proposed amendment. And I'm speaking both as a practitioner in the area of family law and domestic mediation, also as a member of the public with many family members and close friends who are part of the LGBT community. First, in my role as an attorney and mediator, I believe it is a matter of respect and individual liberty to correctly identify each individual who is in—is participating in court proceedings as a party or an attorney. You honor a person's dignity and humanity by correctly using their pronouns. When pronouns are not respected, a person feels disrespected and ostracized. Promoting positive use and correct use of pronouns is a step towards helping a marginalized group of individuals feel more confidence in the judiciary, in the legal process. I've found also that and when individuals are shown this type of respect, they are more likely to engage appropriately and behave more respectfully to others. They are more involved in appropriate

negotiations, interactions. And so, alternatively, continuing to refer to a person by their incorrect pronouns is really in—disrespectful. I do believe that there is not compelled speech, as some of the other speakers today have commented, because they—there is another option that exists, but—that they can use a person's title as they've mentioned: "attorney Smith," "attorney Jones," "plaintiff," "defendant." But what is—what this does—it does require, if a judicial court or their staff are going to use pronouns, then they use correct pronouns. And that's what I believe is so important about this change in the rule. I'm also here to talk about my views as a person with multiple family members—[cough] excuse me, suffering from a cold—who have transitioned in their—from their pronouns assigned at birth to pronouns that honor their true identities. I personally witnessed significant positive changes in those persons when they are respected for who they authentically are. And I think that is a very important requirement of this rule. We are going to treat people in the way that they are authentically bringing themselves and—to this Court. Many of my other comments were similar to the comments that have already been spoken here so thank you today for allowing me to express my voice and be heard today.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you. Thank you very much for being here today. Our next speaker, James Gallant.

JAMES GALLANT: Hello, can you hear me?

CHIEF JUSTICE ELIZABETH CLEMENT: Yes.

JAMES GALLANT: I'm James Gallant with the Marquette County Suicide Prevention Coalition and these are my opinions. And please approve a motion to postpone consideration of the amendment of MCR 1.109 that's before you today to allow a—the fictional personal pronouns to be added to court forms in Michigan and presumably create a liability for the court for non-compliance. This proposal would create an undue burden on everyone involved, including added confusion, stress, and anxiety upon individuals of varying degrees of mental health conditions and increasing their risk for adverse mental health events, including lethal and non-lethal suicidal behavior. The issue of personal pronouns appears irrelevant on its face and would be relevant in only a minuscule amount of proceedings. I would ask the Court today to table this proposal indefinitely until you post and consider the proposal recently from your appointed rules committee to eliminate all personal pronouns from all court forms in Michigan and you schedule that to your next administrative hearing because approval of the rules committee proposal would render this proposal moot. So, please consider hiring a registered parliamentarian for expert recommendations because I believe the Michigan support—Supreme Court now has a constitutional obligation to formally

consider and properly dispose of your rules committee proposal according to the fundamental principles of parliamentary procedure contained in Robert's Rules of Order, newly revised, because the court has created and approved those recommendations with our—within our civil society deliberative assembly framework that is Robert's Rules of Order. In closing and by example, I would say that Michael Brady, director of legal services for the Michigan Department of State, gave Secretary of Benson—Secretary of State Joyce [sic] Benson just one instruction when she convened the Michigan Independent Citizens Redistricting Commission in 2020, as the secretary without a vote. He said, "you must follow Robert's Rules of Order, period," and line 3686 [ph], line eight of Robert's Rules of Order says, "you shall have no debate before there's a motion with a proper second." So, the Supreme Court has stepped out of the courtroom and into our civil society deliberative assembly framework and I would ask you to please get expert opinion on this from a registered parliamentarian and postpone—and I disagree. This should not be even approved and it will become moot if you eliminate all personal pronouns, which would ensure equity for all the people. Just eliminate it all for everybody and then it would create—it would lessen the confusion on the court. And like you said, updating the softwares [sic] and all of this stuff is an undue burden on everybody. And it should not be allowed under the parliamentary procedure that you created the rules. See, you're using both. You're kind of using court rules in our civil society rules of making recommendations as they come up the pike through the State Court Administrator's Office. I've spoke to Milt Mack about this and—

CHIEF JUSTICE ELIZABETH CLEMENT: Mr. Gallant, Mr. Gallant, I'm sorry your time has expired. Thank you very much for being here today and sharing your position. I appreciate it.

JAMES GALLANT: Any question? Any questions, please?

CHIEF JUSTICE ELIZABETH CLEMENT: I do not see any.

JAMES GALLANT: Okay. Thank you very much.

CHIEF JUSTICE ELIZABETH CLEMENT: Our next speaker is Donald Wheaton.

DONALD WHEATON: Greetings and thank you for this opportunity to speak about the proposed changes to MCR 1.109. May it please this honorable Court, I'm Don Wheaton, and as you can probably tell I am white and I am middle aged. What may not be so obvious is that I am cisgender and straight. I'm the immediate past chair of the LGBTQ+ Section and I'm the current recording secretary of the Family Law Section. And I believe that the proposed changes should be adopted. Why? It's a matter of respect.

I wouldn't dream of walking into the Hall of Justice in your courtroom and addressing, for example, Justice Viviano as "David" instead of "your Honor." Calling someone by their preferred pronouns is really not a bothersome or cumbersome task, and it makes a tremendous impact on someone participating in a court case to be called what they affirmatively state they want to be called. It makes them feel more a part of a system that they've historically been excluded from or have felt has been traditionally opposed to their very existence. And the proposed changes to the court rule, using common sense, gives an out to jurists who, for whatever reason, won't use a litigant's preferred pronouns. The jurists can simply refer to the person as "plaintiff Smith," "defendant Jones," or some other neutral identifier that doesn't conflict with the participant's preferred pronouns. Our courts need to be more inclusive so that all participants feel like they have been seen, they've been heard, and they've been treated with dignity. And, as you're no doubt aware, the Family Law Section took a position on this amendment, and it is in favor of the amendment. And the LGBTQ+ Section is also in favor of this amendment. I sincerely hope you will adopt these changes, but if there is any resistance, rather than throwing the baby out with the bath water, I believe that striking the words "if doing so will help ensure a clear record" from the proposed changes will resolve all the concerns I've heard today and read about raised in opposition. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Questions? Our next speaker is Heather Johnson.

HEATHER JOHNSON: Good morning, your Honors. Thank you for the opportunity to comment on MCR 1.109. I'm Heather Johnson, a gender queer law professor at Michigan State University College of Law. I teach courses on sexuality gender in the law and higher education law and policy. I am here today as one of the faculty advisors of the Triangle Bar Association, the LGBTQ+ student organization of the Michigan State University College of Law. Permitting the use of personal pronouns is incredibly important for the legal profession as a whole but also for law schools and law students. In a pluralistic society, permitting the use of personal pronouns helps to promote respect, inclusion, and fairness to all. Permitting personal pronoun use also can curb or potentially eliminate microaggressions, as we've heard from several speakers here today involved in misgendering. It also minimizes the potential for bias. Further, permitting the use of personal pronouns in Michigan courts increases the administration of justice and improves public confidence in the legal system. As a law professor, I would be remiss if I did not address a concern in some cases that have been brought up here today, both with the *Meriwether versus Hartop* case decided in 2021 in the Sixth Circuit and in the recently decided *Kluge versus Brownsburg Community School Corporation*, decided just earlier this year in March of 2023 in the Seventh Circuit. They

are all—they are conflicting opinions so there is currently a circuit split on this issue. But it is in a court—in a classroom and the professor's compelled use. In the *Meriwether* decision, in the Sixth Circuit decision, it is widely held by over a hundred law professors that called for an *en banc* hearing that there was a lapse in judgment on how professors should conduct themselves in a classroom by the Sixth Circuit Court. The brief written by Alvin Lee and Brent Ray asserts that academic freedom could not shield a professor's actions. In this case, we don't have the shield of academic freedom. Further, the American Bar Association and the federal court system encourages the changes that we are considering in the MCR 1.109 amendment. Last spring, I had the opportunity to work with the Michigan State University Law Triangle Bar Association leadership to submit a comment and to gather signatures from the law school community in support of this comment. I would like to now introduce to you the 2023-2024 executive director and rising 3L, Nick Butkevich, to tell you about the support for this amendment in the law school community and why permitting the use of personal pronouns are particularly important in legal education.

CHIEF JUSTICE ELIZABETH CLEMENT: All right. Well, Nick, you were next on my list anyway. Welcome.

NICKOLAS BUTKEVICH: It is an honor to speak in front of this Honorable Court today, and thank you, Professor Johnson. The proposed amendment to Michigan Court Rule 1.109 would have an important impact on law students. First, the number of LGBTQI+ identified individuals in Michigan continues to increase. Thus, it logically follows that the number of LGBTQI+ law students will increase and the number of parties who identify as LGBTQI+ as well. Second, this is a simple step of making the legal field more inclusive and ensuring that LGBTQI+ individuals from courtrooms to classrooms feel affirmed and accepted in the legal field and specifically for law students in the field of law itself. If adopted, this court—this court rule can help alleviate stressors of an already stressful experience of being in law school for LGBTQI+ students, such as a fear of being misgendered during a potential internship opportunity and the potential loss and educational experience that could be lost from not engaging in this opportunity because of the fear of being misgendered or having your identity not be affirmed. Third, the State of Michigan has already taken steps to affirm that identities of all Michiganders, such as the new processes for changing your gender marker or the non-binary agenda marker designation on licenses, such as improvements in the name change process or the inclusion of sexual orientation and gender identity in the recently amended Elliott Rights—Elliott-Larsen Civil Rights Act. This proposed court rule is another simple step that our courts, which should be accessible to all people, can take to ensure that they are more inclusive. And fourth, this rule will provide much clearer record keeping because it keeps identification of a party or attorney consistent and that

each person who enters the courtroom will feel included and respected. I was part of drafting the comment which garnered support from over 200 law students, law professors, faculty, and even deans from two of the Michigan law schools. Explaining this process and getting people to sign on in support received, even at the risk are being targeted by anti-LGBT individuals and groups, shows the immense support that incoming legal professionals have for making Michigan courts a more inclusive and accessible place for all. And we can do that by adopting this proposed amendment to Michigan Court Rule 1.109. Thank you.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Any questions? Our next speaker is John Casupang. How did I do?

JOHN CASUPANG: Pretty close.

CHIEF JUSTICE ELIZABETH CLEMENT: Okay.

JOHN CASUPANG: Thank you. Good morning, Chief Justice and Associate Justices. John Casupang, he/they pronouns. I'm appearing today to be the voice of the 226 people who signed on to my letter in support of the proposed amendment submitted on May 1st. Pronouns matter. Using a person's correct pronouns is a way to respect them and a way to create an inclusive environment. The proposed amendment respects free speech from both viewpoints. Opponents to the amendment reference free speech and religious concerns. However, nothing in the proposed amendment compels or infringes on either. If someone objects to using a person's correct pronouns, the proposed amendment allows for other respectful means of addressing that individual. Equal access to justice means that all persons who come before the court will be treated fairly with dignity and respect. It means that the legal protections regarding sexual orientation, gender identity, and gender expression will be upheld, as the Court held in—as this Court held in *Rouchworld* and the legislature's intent in amending ELCRA. To be clear, free speech infringes upon—free speech infringement occurs when a person before the court is forced to use or identify with an incorrect pronoun that they do not identify with. For these reasons, we strongly request the Court adopt the proposed amendment to MCR 1.109, and I welcome any questions.

CHIEF JUSTICE ELIZABETH CLEMENT: I don't see any questions. Thank you very much. Our next speaker is Jonathan Sacks.

JONATHAN SACKS: Good morning, Chief Justice and to the Court. Thanks for the opportunity to comment. I wish to share SADO's perspective today—I'm the director of the State Appellate Defender Office—because I think it demonstrates why we

need this proposal, and we think it's a really simple step towards greater respect and dignity in the courts. So, in December 2021, our client, Gobrick ,was in front of the Court of Appeals and the court issued an opinion affirming their conviction. The court in that opinion—and Justice Zahra, this goes to your question earlier of, have we seen this situation and problems here and a lack of respect? So, the court made the same decision as the Kent County prosecutor and that was to refer to our client, Gobrick, as a transgender woman using their correct pronoun. And that should have been it; that should have sort of ended things. Their conviction was affirmed. We would have—we wrote the letter about the Michigan Supreme Court application rights. But instead, in a concurring opinion, the third court of appeals judge wrote an opinion sort of out of nowhere. And here's what this opinion did, it made conclusions referring to gender as an immutable truth. It made assertions about societal choices through all of human history. It elected to talk about their birth—Gobrick's birth as a biological male and it couched the platform as a concern for grammar. Our client got up, they opened a letter sent to them in the Department of Corrections to see sort of the update from their attorney about the case. And they should not have had to see a judge ridicule them and use their gender as a platform for politics and rhetoric. And that's exactly what happened and that's why this rule is so simple and so important. It's simple respect by courts for parties involved and in this case, particularly for marg—such a marginalized group. We know that transgender people have disproportionate involvement in the criminal legal system as both victims and as incarcerated individuals. We've heard a bit about that today. This isn't a big ask. The U.S. Supreme Court did this about three weeks ago. The opinion was called *Santos-Zacario v Garland*. It's an immigration case. And that opinion starts by saying, "Petitioner Leon Santos-Zacaria (who goes by the name Estrella) fled her native Guatemala in her recent [sic: early] teens." That's it and it's unanimous opinion. There's no concurrence that makes political statements and talks about wokeness or anything along those lines. In the comments on the rule and the comments today, people make this something else: political issue, compelled speech, or an effort that creates utter confusion. That's not accurate. This proposal's basic. It's simple. It allows courts to make a clear record if it's necessary and use an individual's name or other respectful means for that record. Thanks for consideration. Thanks for looking at this basic and important step.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. I don't see any questions. Our next speaker is Kim Ray. Thank you for being here.

KIM RAY: Thank you. Good morning and may it please the Court. My name is Kim Ray. I'm an attorney and the pro bono coordinator for Ford Motor Company. I'm here today in strong support of the proposed amendment to MCR 1.109. Over the past four years, I've had the privilege of representing numerous transgender clients in pro

bono name-change petitions. These petitions are generally straightforward and could likely be done without a lawyer, but I found the process to be very intimidating for this client group. Why? Because they've faced years of abuse, rejection, and estrangement in the simple pursuit of living an authentic life. They are expecting the same treatment in the judicial process and that can often cause barriers to them seeking assistance in our court system. As somebody who promotes the access to justice and works to break through those barriers, this is an important issue to me. Today, many of us are including our personal pronouns in our email signature blocks and in meetings such as this. We do that so that others know how to address us. And we do that because it fosters a culture where others feel comfortable sharing their personal pronouns, all in a non-intimidating, non-invasive way. This amendment is one small step we can make as legal professionals to show our clients and our colleagues courtesy and respect. By including personal pronouns. the court will have information to address the parties and attorneys appropriately and avoid misgendering. It also avoids the often awkward conversation I have at the beginning of every name-change hearing, providing my clients' personal pronouns. We shouldn't put our clients through that when there is a more respectful, less invasive way to inform the court. And that's this amendment. Thank you for your time today and the opportunity to speak.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much, and I don't see any questions. Our last speaker today is Helen Brinkman.

HELEN BRINKMAN: Thank you, your Honors. I've listened to most of the comments. I want to say that I am a trial attorney. I would be in jury trials twice a month on average. I also am an appellate attorney and I know the importance of transcripts. I appreciate everything that's been said, and everything that's been said is very respectful to persons' identities. The problem is that a transcript and a jury trial are very important. The trials and the transcripts are about the facts, and a transcript has to be accurate. I also have dealt with many LGBTQ clients. I have one whose pronoun is "my hero." If I ask the court to address my client as "my hero," doesn't that cause an issue? Also, I have some that ask to be called "they" or "them." I've had many cases as a prosecutor where I have multiple defendants and I refer to "they" and "them," but perhaps one of those defendants may identify individually as "them." Now, I'm going to have to stutter, stammer, and really lose focus. It's difficult for me. I am in my 60s and I still practice, and I've heard many of the comments, even those who represent LGBTQ people, still using "he," "they," "them." That's what happens. I have not encountered a judge who's disrespected a client in all my years of practice, intentionally. And to the one comment or the two that humiliated either a counsel or a defendant in a case, those judges can be reprimanded and sanctioned under current rules and professional responsibility. So, what we're doing here is opening up a huge liability for judges who

already manage their courtrooms well. They don't rest—disrespect their clients. One other thing real quickly about the religious comment about judges doing divorces in violation of their conscience. At least to the Christian faith, there is an option for divorce. Even Moses granted that. So, that is not against the faith. I just wanted to point that out for the record. Also, I want to I want to make one comment that hasn't been made. In my experience as a prosecutor and representing clients from this community, what you do when you emphasize a pronoun, you are highlighting the differences rather than keeping that person on par and keeping everyone focused on facts rather than individual differences. That, I believe, can be a problem. I believe that insurance companies are going to have to start having special clauses regarding this. I think we're opening up a lot of liability where it's simply not necessary. Thank you, your Honors. I appreciate your time.

CHIEF JUSTICE ELIZABETH CLEMENT: Thank you very much. Thank you for being here today. And that concludes our public hearing for the day. Thanks everyone for your time.

HELEN BRINKMAN: Thank you.