

**CATHOLIC LAWYERS SOCIETY  
OF METROPOLITAN DETROIT**

July 19, 2023

BY EMAIL AND FIRST CLASS MAIL  
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Justices of the Michigan Supreme Court  
c/o Office of Administrative Counsel  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

Re: Supplement to Statement of the Catholic Lawyers Society of Metropolitan Detroit on  
ADM File No. 2022-03, Proposed Amendment to MCR 1.109

Dear Chief Justice Clement and Justices:

The U.S. Supreme Court’s recent decision in *303 Creative LLC v Elenis*, 600 US —; 143 S Ct 2298; —L Ed 2d— (2023), is a timely reminder that “a State may [not] coopt an individual’s voice for its own purposes,” even where the stated goal is to avoid offending a class of people protected under state civil rights law.

At issue in *303 Creative* was whether Colorado could apply its anti-discrimination law to force a website designer “to create wedding websites celebrating marriages that defy her beliefs.” *Id.* at 2308. Ruling in favor of the website designer, the Court issued a ringing affirmation of its leading First Amendment precedents: Simply put, “freedom of speech prohibits the government from telling people what they must say.” *Id.*, citing *Rumsfeld v Forum for Academic & Institutional Rights, Inc*, 547 US 47, 61–62; 126 S Ct 1297; 164 L Ed 2d 156 (2006). The “coercive elimination of dissenting ideas” is antithetical to the First Amendment, even if the state deems those ideas to be “misguided” or likely to cause “anguish” or “incalculable grief.” *303 Creative*, 143 S Ct at 2312.

The proposed amendment of MCR 1.109 is clearly designed to promote one point of view—that sexual identity is a matter of choice and infinitely malleable—and to silence opposing views. This Court cannot, without running afoul of the First Amendment, command judges (and possibly court employees, as the scope of “courts” and “court” is not defined in the proposed rule) to speak in ways that violate their consciences. We agree with Justice Welch, who observed in *People v Gobrnick*, 981 NW2d 59, 60 (Mich 2022), that “words matter”—indeed, they matter a great deal to Catholics and others who reject transgender ideology as contrary to the natural order of creation. CLSMD Statement 4–8. They should

not be pressured to speak against their consciences to support strongly disputed notions of “civility” and “inclusion.”

To the extent that the Court may be considering an “optional” version of the proposed rule that encourages without requiring the use of false pronouns, we respectfully remind the Court of its duty to remain impartial. Whether false pronouns are required or optional, adopting a rule would signal that this Court favors transgender ideology and disfavors the conscience rights of judges and court employees who dissent. A “soft option” is no less oppressive for being “soft.” And it would still represent unacceptable government interference in the “marketplace of ideas.” *303 Creative*, 143 S Ct at 2311.

Respectfully submitted,

Catholic Lawyers Society of Metropolitan Detroit<sup>1</sup>

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<sup>1</sup> The Society’s board of directors approved this statement on July 19, 2023. The Society’s board consists of 15 directors divided into three classes, with two of those classes consisting of lawyers and one class consisting of judges. The judges abstained from voting on the statement because they may be called upon to interpret the proposed amendment if it is adopted. Cf. Letter from Judges of the Court of Appeals to Larry S. Royster, Esq., Clerk of the Supreme Court, at 2, n 4 (Mar. 1, 2023).