

No. 18-107

**In The
Supreme Court of the United States**

R.G. & G.R. HARRIS FUNERAL HOMES,

Petitioner,

v.

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
AND AIMEE STEPHENS,**

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

**AMICUS BRIEF OF
FREE SPEECH ADVOCATES
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS¹

Free Speech Advocates (FSA) is a legal defense project that exists to secure the First Amendment rights to engage in religious witness, peaceful sidewalk counseling, and protest of or conscientious objection to the destruction of innocent human life. FSA has appeared as amicus in this Court in previous cases. FSA is concerned about the threat of imposition of a totalitarian ideology of transgenderism, an ideology that is both incoherent and destructive and which is completely intolerant of dissent or even criticism.

SUMMARY OF ARGUMENT

The complaint regarding Aimee Stephens, fka William Anthony Beasley Stephens, rests upon two essential premises: first, that the notion of “gender identity” discrimination is coherent and administrable; and second, that Stephens, contrary to biology, is a woman. Neither premise is true.

First, to embrace “gender identity” necessarily is to abolish all sex categories. Among other fundamental problems, to insist that a Bruce/Caitlyn Jenner be allowed to enter the women’s shower facilities because Jenner identifies as female, while Harvey Weinstein cannot because Weinstein identifies as male, is precisely to engage in gender identity discrimination.

¹ The parties in this case have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part. No person or entity aside from amicus or counsel for amicus made a monetary contribution intended to fund the preparation or submission of this brief.

Second, exalting a person’s internal sense of identity over biological reality is completely unworkable, given *inter alia* the unverifiability and changeability of such internal sense of self, the untethering of gender identity from a binary physiological norm in favor of a limitless “spectrum” of gender identities, and the complete disregard of the very reasons for separate women’s facilities, which has nothing to do with internal self-identification and everything to do with physical sex differences.

NOTE ON TERMINOLOGY

To refer to respondent Stephens with female pronouns is to prejudge a basic question at issue, namely, whether Stephens, despite his biology, is actually female. In *Farmer v. Brennan*, 511 U.S. 825 (1994), a case involving a “transsexual” prisoner “who is biologically male,” *id.* at 829, this Court’s eight-Justice majority opinion, authored by Justice Souter, scrupulously (and presumably intentionally) avoided all pronouns in referring to the prisoner (except when directly quoting other sources). *Compare id.* at 852 (Blackmun, J., concurring) (using male pronouns). This Court should either follow the *Farmer* model and simply refer to “Stephens” or “respondent,” or else, given the fundamental incoherence of transgenderism (discussed below), employ pronouns as they have been used since the dawn of language, namely, to refer to the biological sex of a person. To do otherwise is certainly not “accurate” or “proper,” *contra* Resp. Br. at 9 n.6. Nor does “respect” command, *contra id.*, in a public document such as this Court’s ultimate opinion, (1) disrespect for the previously universal rules of grammar, (2) communication of an inaccurate message

to the countless readers who would mistakenly think that this Court was using the same language they speak, and (3) condescension toward Stephens.

To the extent this amicus brief uses pronouns, the usage will reflect the historic link between pronouns and biological sex.²

ARGUMENT

Being fired for refusal to observe a dress code is certainly dismaying to the employee who loses the job. But the former employee here does not claim to challenge the permissibility of sex-based dress codes. Instead, respondent Stephens seeks to transform this case into one of transgender or gender identity discrimination. For many reasons, this Court should decline that invitation.

I. “GENDER IDENTITY DISCRIMINATION” IS AN UNWORKABLE CONCEPT.

Stephens asserts that he was fired “for being transgender.” Resp. Br. at 3. What does this mean? There are several possible theories, but under none of them does Stephens present a viable legal claim.

² Respondent Stephens and his amici refer to people being “assigned” a sex, as if being male or female were just a label arbitrarily slapped onto a person. While there are certainly exceptional cases of anomalous sexual development, *see* Br. of Amici InterACT *et al.* at 10-15 (listing diagnoses), the existence of such anomalies does not negate the validity of sexual categories any more than that the existence of ligers negates the categories of lions and tigers. *See United States v. Kapp*, 419 F.3d 666, 670 n.1 (7th Cir. 2005) (“a ‘liger’ is a cross between a male lion and a female tiger”).

A. It is not “gender identity discrimination” to distinguish biological females from transgender females.

First, the notion of discrimination “for being transgender” could mean distinguishing between those who are female *by biology* and those who are supposedly female *by gender identity*. The theory would be that for purposes of the term “sex” in Title VII, gender identity controls a person’s sex, which means Stephens is a woman; hence, treating him differently from other females violates Title VII. In other words, under Title VII, Stephens argues he is a woman who is treated differently from other women because he is a transgender (internal self) woman instead of a cisgender (biological) woman.

But even under the (false) premise that Stephens is a woman, this theory depicts discrimination *between different women*, not between women and men, so it is not sex discrimination. Nor is this sex stereotyping discrimination, since under Stephens’s theory, he is a woman who wants precisely to present “as a woman.”³ Compare *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989) (plurality) (woman attorney advised to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry”). Nor is this *gender identity* discrimination, since both Stephens and the biological women have a female gender identity (i.e., consider

³Ironically, Stephens asserts the need to adhere to the very stereotypes he decries, as shown by the simple substitution of sex for gender identity in his own words: “The notion that someone [with a female gender identity] will identify, look, and behave ‘as a [wo]man’ is undeniably a sex-based stereotype.” Resp. Br. at 32.

themselves women). Under Stephens’s own theory, then, he is not treated differently on the basis of sex or gender identity, and hence his claim collapses.

B. It is not “gender identity discrimination” to treat all biological males the same regardless of gender identity.

Second, discrimination “for being transgender” could mean that petitioner Harris Funeral has engaged in “gender identity” discrimination between biological males. The theory would be that the term “sex” in Title VII includes “gender identity” and that treating biological males with a “cisnormative” gender identity (i.e., males who do not deny they are males) differently from biological males with a “transgender” gender identity (i.e., males who believe they are females) violates Title VII.

But holding all biological males to the *same* dress code *regardless* of gender identity is not discrimination on the basis of gender identity. To the contrary, holding biological males to *different* dress codes *based on* gender identity – what Stephens requests – would literally be discrimination on the basis of gender identity. *See* Ed Whelan, “Northern Virginia School Boards Submit Amicus Brief Against Own Transgender Policies,” *National Review Bench Memos* (Apr. 30, 2019) (Point 2). Stephens’s claim therefore fails at the outset.

Moreover, the theory Stephens proffers inevitably would require the abolition of all sex categories. If Stephens, with his gender identity – he believes he is a woman – has a right to dress like a woman at work, then to deny that same right to other biological males who have a *different* gender identity (namely, male)

discriminates on the basis of gender identity. A ban on gender identity discrimination would mean the relevant defendant (a school, prison, employer, etc.) cannot include or exclude based on gender identity. Thus, if Jazz Jennings gets to use the girls' locker room, then so does Ferris Bueller. If Andraya Yearwood gets to race in the girls' track events, *see* Karma Allen, "Transgender teens outrun track and field competitors but critics close behind," *ABCNews* (June 13, 2018), then so does the next young Jim Ryun, *see* Rick Plumlee, "Jim Ryun reflects upon 50th anniversary of breaking four-minute mile," *The Wichita Eagle* (June 4, 2014). If Chelsea Manning could insist on being housed with female prisoners, then so could "Jogger Rapist" Richard Troy Gillmore. *See also* Nazia Parveen, "Transgender prisoner who sexually assaulted inmates jailed for life," *The Guardian* (Oct. 11, 2018) (biological male claiming female identity "admitted sexually assaulting women in a female prison").

C. It is not "gender identity discrimination" to decline to let an employee violate dress codes enforced regardless of gender identity.

Third, discrimination "for being transgender" could mean not letting a transgender person take those actions the person believes comport with an internal sense of sex. The theory here is that Stephens, as a transgender person, is being denied the ability to "present" as the woman he thinks he is.

But this is really a claim for *special rights* for transgender persons. If Harris Funeral allowed biologically male employees with *male* gender identities to dress as women, but not Stephens with

his *female* gender identity, then Stephens could plausibly claim to be singled out for his gender identity. But he makes no such claim, and there is no evidence to support such a claim. To the contrary, Harris Funeral would not have let Stephens “present as a woman” even if he had claimed that he still had a male gender identity but just wanted to cross-dress.

Q. Okay. Is it – the reason you fired him, was it because he claimed that he was really a woman; is that why you fired him or was it because he claimed – or that he would no longer dress as a man?

A. That he would no longer dress as a man.

JA 55 (30(b)(6) (Depo. of Thomas Rost). *See also id.* (would *not* have fired Stephens if he had asserted a female identity but only cross-dressed *outside of work*). Stephens’s claim thus asserts that, because he is transgender, he does not have to follow the same rules that other biological males have to follow. That is the *opposite* of a discrimination claim.

II. “TRANSGENDER” IS AN INCOHERENT CONCEPT.

As discussed above, a prohibition on “gender identity discrimination” is wholly unworkable, as it would require complete abolition of all sex categories and would negate the very concept of sex discrimination. Compounding these difficulties is the incoherence of the very idea of transgenderism.

Stephens and his amici define transgender to mean a mismatch between one’s biological sex (what they refer to as “sex assigned at birth”, *see supra* note

2) and one's inner sense of being male or female (what they refer to as "gender identity"). *See* JA 180-81 (Plf. Resp. to Interrogs.); Resp. Br. at 4; Br. for Amici Transgender Legal Def. & Educ. Fund (Trans. LDF) at 13; Br. of Amici AMA at 4-5; Amici Br. of Transgender Law Center (Trans. LC) at 3 n.3. While a sense of disconnection between one's anatomy and one's internal self can certainly be quite real, sincere, enduring, and deeply disconcerting, the concept of transgenderism suffers from serious flaws.

A. Why should one's internal sense of sex, and only sex, be legally relevant?

First, according to Stephens and his amici, one's gender identity is wholly independent of one's biological, anatomical self. The whole notion of transgenderism, of course, is that gender identity need not correspond to birth sex. Stephens himself takes the position that it is "irrelevant" whether he himself was "born a biological male," has male sex organs, had "sex reassignment surgery," had "hormone treatment or therapy," JA 181-82, 184 (Plf. Resp. to Interrogs.), or "was anatomically a male – that is, that Stephens was chromosomally a male and had male genitalia," JA 186 (Plf. Resp. to Requests for Admissions). *See also* Trans. LDF at 18 ("Neither hormone therapy nor surgery are required"); Br. for Amici Scholars Who Study the Transgender Population at 15 n.43 ("a transgender identity is not dependent upon transitioning or on any specific medical treatment"). In short, gender identity is *completely* disconnected from *any* visible anatomical evidence (though, like all mental dispositions, it may

have cerebral correlates,⁴ such as associated brain patterns, *see* Trans. LDF at 17). Which raises important questions, such as:

- Why should an invisible self-sense be the basis of legal rules and liability?
- If one can be “female” with a male body, male attire, and no transition, is transition or cross-presentation essentially elective, like cosmetic surgery to enhance one’s “self-esteem and self-confidence,” “Cosmetic surgery,” MayoClinic.org⁵?
- Why should one’s self-sense be the controlling consideration only as to gender, and not as to other personal characteristics?⁶

⁴*See, e.g.*, “Brain Patterns Of Former Anorexics Reveal Clues To Disorder’s Lasting Impact,” *Science Daily* (Dec. 2, 2007); Esther Landhuis, “Brain Imaging Identifies Different Types of Depression,” *Scientific American* (Feb. 21, 2017); Gilian Tenbergen *et al.*, “The Neurobiology and Psychology of Pedophilia: Recent Advances and Challenges,” 9 *Frontiers in Human Neuroscience* 344 (2015); Soyoung Q. Park *et al.*, “A neural link between generosity and happiness,” *Nature Communications* (July 11, 2017).

⁵www.mayoclinic.org/tests-procedures/cosmetic-surgery/about/pac-20385138.

⁶Like **age**, *see* Camila Domonoske, “Dutch Man Loses Bid To Change His Age, Plans to Appeal,” *NPR* (Dec. 4, 2018) (69-year-old claims he feels much younger than that); Emily James, “‘I’ve gone back to being a child’: Husband and father-of-seven, 52, leaves his wife and kids to live as a transgender SIX-YEAR-OLD girl named Stefonknee,” *Daily Mail* (Dec. 11, 2015), **race**, *see* Faith Krimi, “Rachel Dolezal, white woman who portrayed herself as black, accused of welfare fraud,” *CNN* (May 25, 2018), **height**,

- What sense does it even make to speak of an intangible inner gender? Isn't that like asking what color the letter "R" is, or how much a funny memory weighs?

B. Are persons' beliefs about their sex, unlike other beliefs, infallible and immutable?

Stephens's theory assumes that a person's internal sense of being male or female is both accurate and enduring. His amici assert this even more strongly: "all people have an internal understanding of their sex that is immutable, innate, and the only reliable indicator of that person's sex." Trans. LDF at 3. The point presumably is to analogize gender identity to race and sex. But the premise fails.

1. Human beings often err in their self-sense.

Why should this particular belief, unlike so many other human beliefs, never be erroneous or changeable? People often mistakenly assess their own abilities (e.g., overrating their singing or athletic skills) and disabilities ("I don't have a drinking problem," see Sarah A. Benton, "Being High-Functioning: Feeding the alcoholic denial," *Psychol. Today* (Feb. 10, 2009), or "I don't need to see a doctor,"

see David French, "Watch: College Kids Can't Explain Why a Short White Man Isn't a Tall Asian Woman," *National Review Online* (Apr. 16, 2016), or even **species**, Gavia Baker-Whitelaw, "Meet the people who don't identify as human," *The Week* (July 21, 2015) (discussing "otherkin"). Stephens identifies no principled reason to treat *only* one's self-sense of *sex* as determinative.

see Cherie Berkley, “Denying Health Issues Can Be Deadly,” *WebMD*). Other errors might qualify clinically as delusions. See “Delusions and Delusional Disorder,” *WebMD* (“People with delusional disorder often can continue to socialize and function normally, apart from the subject of their delusion, and generally do not behave in an obviously odd or bizarre manner”). Those delusions can relate to the person’s body. *E.g.*, Rianne M. Blom *et al.*, “Body Integrity Identity Disorder,” 7 *PloS One* (2012) (“mismatch between the mental body image and the physical body” accompanied by “intense desire to amputate a major limb or sever[] the spinal cord in order to become paralyzed”). Anorexics mistakenly believe they are overweight. See “Totally In Control,” *Social Issues Research Center*⁷ (discussing rise of pro-anorexia websites). Men have mistakenly believed themselves to be Napoleon. *E.g.*, The University of Chicago Press Book Review: Laure Murat, *The Man Who Thought He Was Napoleon: Toward a Political History of Madness* (“the next day, the director of a Paris hospital for the insane admitted fourteen men who claimed to be Napoleon”).⁸ See also *id.* (“the watchmaker who believed he lived with a new head, his original having been removed at the guillotine”); Anne Ruminjo & Boris Mekinulov, “A Case Report of Cotard’s Syndrome,” 5 *Psychiatry (Edgmont)* 28 (2008) (“Cotard’s syndrome comprises any one of a series of delusions that range from a belief that one has lost organs, blood, or body parts to insisting that one has lost one’s soul or is dead”).

⁷www.sirc.org/articles/totally_in_control2.shtml.

⁸www.press.uchicago.edu/ucp/books/book/chicago/M/bo15344276.html.

By what logic should it be assumed that, in the face of so many human errors in so many different contexts, one's subjective self-sense is "the only reliable indicator of that person's sex," Trans. LDF at 3? Is not an objective referent, such as biological sex, far preferable when establishing and enforcing rules?

2. Human beings change their professed gender identity.

As for immutability, how does one explain the many people who have changed from asserting transgender status to renouncing that self-sense? If they were mistaken in the first place, then self-assessment is not infallible. And if they changed gender identities, then gender identity is not immutable.

This brief would exceed the word limit if it were to cite every case of someone "detransitioning" or coming to realize that their sense of being transgender was mistaken. Here are some samples: Joan McFadden, "Transition caused more problems than it solved," *The Guardian* (Sept. 16, 2017) (Elan Anthony); Christopher Goffard, "Public triumph, private torment," *Los Angeles Times* (Mar. 27, 2010) (sports writer Mike Penner); Daisy Dumas, "The in-betweeners," *The Sydney Morning Herald* (July 31, 2015) (Cecile Stuart, Walt Heyer, Joel Nowak, Alan Finch); Jesse Singal, "When Children Say They're Trans," *The Atlantic* (July/Aug. 2018) (Max Robinson, Cari Stella, Carey Callahan); "Rene Jax at Gender Identity Forum in Manchester, New Hampshire,"

*YouTube*⁹ (Rene Jax); Lisa Bourne, “The lie was crushing me’: First gov’t-recognized ‘non-binary person re-embraces his male sex,” *LifeSiteNews* (Apr. 18, 2019) (James Shupe).

That a characteristic is changeable does not necessarily mean it cannot be legally protected. Religion, for example, is a belief that a person professes but which the person can later reject and replace with a different belief. However, protection of religion – like protection for political beliefs, where covered by law – typically means that authorities should *disregard* those beliefs when making decisions. Stephens and his allies, by contrast, insist on precisely the opposite: that this personal belief be the *basis* for altering the treatment a person receives and the rules the person must follow.¹⁰

C. How is a potentially infinite set of gender identities manageable?

The male/female binary has a recognizable, numerically limited biological anchor: sexual dimorphism reflects the *two* complementary components physically required for procreation. One’s mental state, by contrast, has no such natural biological constraints, and thus presents a *potentially*

⁹www.youtube.com/watch?v=IN0sT6bHjR8.

¹⁰To be sure, the Free Exercise Clause and statutes like Title VII and RFRA require affirmative accommodation of religious beliefs in some cases; but no comparable federal law applies to one’s belief about one’s gender identity. (Nor, as explained above, would it be advisable to adopt such highly problematic requirements regarding gender identity.)

infinite set of options. See, e.g., Amici Br. of Amer. Psychol. Ass'n at 9 ("Gender identity, like sexual orientation, can be understood as existing across a continuum"); Trans. LC at 3 n.3 ("Non-binary is a term used to refer to transgender people whose gender identity is neither male nor female"); Amici Br. of LGBTWQ+ Members of the Legal Profession and Law Students at A-15 (student identifies as "pansexual and non-binary"); Rhiannon Williams, "Facebook's 71 gender options come to UK users," *The Telegraph* (June 27, 2014). This presents a huge problem of manageability. If it is already a logistical hurdle to maintain separate bathrooms, sports teams, and prisons for *two* sexes, how is an agency supposed to accommodate *dozens* of gender identities, if not more? If this Court were to accept as legally determinative the radical separation between mind and body that Stephens asserts,¹¹ future courts, government bodies, businesses, and the general public will be at a loss to question, much less reject, the equally unverifiable (albeit sincere) claims of other persons to be anywhere along a gender spectrum.

D. How is gender identity compatible with the *reasons* for lawful sex differentiation?

Stephens does not claim to question the permissibility of sex-based distinctions such as separate male and female sports teams, prisons, showers, locker rooms, and bathrooms. But his arguments, as explained above, would make it impossible to maintain such distinctions. Bodies would

¹¹"I have felt imprisoned in a body that does not match my mind," Br. in Opp. at 1a (Stephens letter).

no longer count; unverifiable assertions (whether sincere or not) of internal self-sense would control. Yet the sex separation that is currently permissible exists because of *bodily* differences, not *mental* states.

Why are there separate girls and boys sports teams? *Fairness*: “Physical differences between men and women . . . are enduring,” *United States v. Virginia*, 518 U.S. 515, 533 (1996). In particular, male athletes, at least after a certain age, have a long list of *physical advantages* over female athletes.¹² The administration of cross-sex hormones, like the surgical removal of male organs, does not eliminate (though it may somewhat diminish) those advantages.¹³ *See, e.g.*, “Transgender Participation Policy,” *USA Powerlifting (FAQ)*:¹⁴

¹²As one article summarized it,

Thanks in large part to testosterone, men are generally heavier and taller than women. They have longer limbs relative to their height, bigger hearts and lungs, less fat, denser bones, more oxygen-carrying red blood cells, heavier skeletons that support more muscle — 80 percent more in the upper body, on average, which is about the difference between male and female gorillas — and narrower hips that make for more efficient running and decrease the chance of injury.

David Epstein, “How much do sex differences matter in sports?” *Washington Post* (Feb. 7, 2014).

¹³In cinematic fantasy, bodies can transform immediately and entirely. *See, e.g.*, “Beast Transformation Scene, X-Men: First Class” (2011), *YouTube*, www.youtube.com/watch?v=RX6XVmz7ETM. In real life, however, existing physical structures remain in place and are only gradually altered in their development.

¹⁴www.usapowerlifting.com/transgender-participation-policy/.

Men naturally have a larger bone structure, higher bone density, stronger connective tissue and higher muscle density than women. These traits, even with reduced levels of testosterone do not go away. While M[ale-]T[o-]F[emale transgenders] may be weaker and less muscul[ular] than they once were, the biological benefits given them at birth still remain over tha[t] of a female.

See also Taryn Knox *et al.*, “Transwomen in elite sport: scientific and ethical considerations,” 45 *J. Med. Ethics* 395 (2018).

Why are there separate men’s and women’s prisons? *Safety*: Even males who have *not* broken the law seriously enough to end up in prison can represent a threat to women confined in their presence. *E.g.*, Michael Rubinkam, “7 prison guards accused of sexually abusing inmates in Pa.,” *USA Today* (Feb. 15, 2018); “Sexual Abuse in Immigration Detention,” *ACLU*.¹⁵ Convicted male prisoners certainly would pose at least the same threat if confined together with female prisoners. This is only common sense. As a federal appeals court recently put it:

[N]o party disputes that placing a female in the general population of a male detention facility created an extreme condition and posed an unreasonable risk of serious harm to the female’s future health or safety. Nor should they dispute this. It is abundantly clear to us that housing a biological female alongside 40 male inmates poses

¹⁵www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/sexual-abuse-immigration-detention-0.

an outrageous risk that she will be harassed, assaulted, raped, or even murdered. . . . After all, female and male inmates are not housed together in prisons because this risk is not only self-evident, but serious and real.

De Veloz v. Miami-Dade County, 756 Fed. Appx. 869, 877 (11th Cir. 2018) (citation omitted), *petition for cert. pending*, No. 18-1510 (U.S. May 31, 2019); *see also Hostetler v. Green*, 323 Fed. Appx. 653 (10th Cir. 2009) (GORSUCH, J.) (denying qualified immunity to prison guard for allegedly letting male prisoner remain in cell with female prisoner who was then allegedly raped).

That a male prisoner might believe himself to be female is no cure-all, as a “transgender woman” can still be sexually desirous of women. Br. of Amici AMA *et al.* at 6 (“Gender identity is distinct from and does not predict sexual orientation; transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual”) (footnote omitted). *See also* “Half of all transgender prisoners are sex offenders or dangerous category A inmates,” *Fair Play For Women* (Nov. 9, 2017); *Michael M. v. Superior Court*, 450 U.S. 464 (1981) (upholding constitutionality of statutory rape law targeting male perpetrators); *id.* at 473 (plurality) (state can take “nature” of sex differences into account).

Why are there separate men’s and women’s showers, locker rooms, and bathrooms? *Privacy (and safety)*: Women have a right to expect that a male will not be present when the woman exposes her private parts (and vice versa). This reflects what the Ninth Circuit described as “our longstanding recognition that the desire to shield one’s unclothed figure from the view of strangers, and particularly strangers of the

opposite sex, is impelled by elementary self-respect and personal dignity.” *Byrd v. Maricopa County Sheriff’s Dep’t*, 629 F.3d 1135, 1141 (9th Cir. 2011) (en banc) (internal quotation marks, citation, and editing marks omitted) (cross-gender strip search); *id.* at 1146 (“the cross-gender nature of the search is a critical factor”). Moreover, the shock of the invasion of one’s privacy comes immediately upon the *appearance* of someone of the opposite sex; the reaction is not deferred pending inquiry into the person’s gender identity.

In each of these contexts, the separation of males and females rests upon *physiology*, not *psychology*. Transgenderism, contrary to human experience, inverts the priority of these two dimensions.

* * *

This Court need not condone invidious or unjust discrimination to reject the claim at issue here. Stephens is a human being deserving the same compassion, respect, and fairness all humans merit by their very nature. Genuine sympathy for Stephens, however, does not necessitate distorting law, logic, and human experience to shoehorn his dress code dispute into some form of “gender identity discrimination.”

CONCLUSION

This Court should reverse the judgment of the Sixth Circuit.

Respectfully submitted,

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