GREAT LAKES JUSTICE CENTER

ISSUE BRIEF

OCTOBER 2, 2017

WILLIAMSTON SCHOOL BOARD SEXUAL ORIENTATION/GENDER IDENTITY POLICIES

The Detrimental Effect on Parents, Students and the Business and Religious Community

INTRODUCTION

Proposed policies extending civil rights protections to LGBTQ individuals improperly increase regulation of parents, students, business and religious organizations. The proposed policies create new protected categories like "sexual orientation," "gender identity," and "gender expression." These policies are commonly referred to as SOGI (Sexual Orientation/Gender Identity) policies. It is the duty of the school board to affirm and uphold constitutionally-protected freedoms, not pass policies granting special protections for some, while coercing and compelling others to comply with a political agenda.

When a board changes school policy to impose a social engineering experiment on parents and students, numerous concerns inevitably arise. This issue brief seeks to fully inform the public of these concerns by presenting a complete and truthful understanding of the issues. We address several constitutional, legal, and economic concerns impacting parents, students, businesses, and religious/charitable organizations.

Preliminarily, we do not condone discriminatory actions toward any person based upon who they are, and hold no animus toward anyone. All of us are made in God's image and are entitled to dignity and respectful treatment. All viewpoints are entitled to fair consideration. To honestly disagree with the proponents of these policies is not hate-speech or bigotry. To make such a claim is itself intolerant and close-minded.

- **NO DEMONSTRATED REASON FOR THE NEW CATEGORIES:** The proposed policies are a solution searching for a problem. No documented history of ongoing, extensive, and pervasive discrimination against the proponents of the policies exists. No proof exists of gay individuals systemically being denied access to educational opportunities, being forced to sit in the back of a bus, or being otherwise discriminated against in the Williamston School District. Undocumented, generalized claims of discrimination do not justify such sweeping changes to Williamston's policies, particularly ones that will infringe on everyone's freedom. The laws are not being promoted to cure a demonstrated problem, but rather to coerce and compel adherence to a particular viewpoint.

- **CREATES AN INTERNAL CONFLICT IN THE LAW:** The proposed policy change creates an internal conflict within the policy itself. Religion is already a protected class under the existing non-discrimination policy. More importantly, the free exercise of religious conscience is a constitutional right. If the board adds these new categories, a clear conflict will exist between the two classes. This will lead to more divisiveness and litigation over which category prevails. Moreover, Michigan's Constitution places significant limits on any policy enacted by the board. Michigan's Constitution specifically provides in Article I, Section 4:

  > *The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.*

- **IMPROPER EXERCISE OF SCHOOL BOARD AUTHORITY:** A question exists as to whether a school board has the authority to add additional non-discrimination categories beyond those listed explicitly in the state Constitution or state statute. Local school boards may not preempt higher state law through a policy. Over the past thirty years, Michigan's legislature has repeatedly refused to add the additional SOGI categories to our civil rights law. Under what authority does the Williamston School Board believe it can override the legislature?

  MCL 380.11a(3) lists the powers granted to a local school board. None of the listed powers grants any authority to a school board to expand or change state law in carrying out its general function to educate children.

  Moreover, MCL 380.10 states:

  > It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children. The public schools of this state serve the needs of the pupils by cooperating with the pupil's parents and legal guardians to develop the pupil's intellectual capabilities and vocational skills in a safe and positive environment.

  The Williamston School Board is required to cooperate with parents, not undermine them. The policy will prohibit persons with traditional views of family and sexuality from exercising their constitutionally protected free speech and free exercise conscience rights. Instead, such persons will face charges of harassment, discrimination, or other punitive action.

  Depending on the answer to the above questions, the board's action may be unlawful.

- **SPECIFIC CONCERNS:** Although this Brief does not specifically address all the political and moral issues raised, Christian parents strongly believe that God created all human life in His image and that every person has positive value and deserves respectful treatment. No true Christian would, therefore, ever discriminate, as that term is traditionally understood, against another human being. Unfortunately, the proposed policies would be applied in a non-traditional manner. Specific concerns with the proposed policies include:

  Policy 1015 District Mission Statement. This policy states the goal is to produce "global citizens" through Williamston's educational program. This language is unacceptable to many parents because we are all, first and foremost, American citizens. This approach devalues our history and traditions.

  Policies 4900 (Fair Employment), 5030 (Non-Discrimination), 7500 (Guidance Program), 8010 (Equal Educational Opportunity), 8040 (School Admissions), 8620-R (Bullying), and 8720 (Student Organizations). The policies all expand the non-discrimination categories beyond those required by state law to include "sexual orientation, gender identity, and gender expression." No state or federal law requires these amendments. As stated above, the Williamston School Board does not have the authority to override the legislature.

  Policy 7500 (Guidance Program) and 8010 (Equal Educational Opportunity). Amazingly, these two proposed policies add the SOGI categories, while **specifically not including "religion" in the protected categories**. If adopted, the guidance and counseling services at Williamston could discriminate against religious students and religious expression. Also, there would no longer be any guarantee of "equal educational opportunity" for students of any

religious faith. The exclusion of the word "religion" is a direct assault on all persons of faith – Christian, Jewish, Muslim, etc. This tramples on the Constitutional rights of parents and students.

Policy 8260-R Bullying. This policy is an unconstitutional attempt to redefine speech as conduct. In doing so, the policy empowers school authorities to arbitrarily suppress speech it disfavors. Obviously, no one wants bullying as we traditionally think of the term. This policy, however, goes much further than one child picking on another. Many of the terms are vague and give unbridled, after the fact, discretion to school officials to define what constitutes bullying – a clear constitutional due process violation. For example, the definition of "Aggressive Behavior" bans "inappropriate conduct" that negatively impacts a student's "educational, physical, or emotional well-being." This definition comports with the progressive left's attempt to convert any speech with which they disagree into "violence" or "micro-aggressions." Think Antifa. Such a policy will be used to punish and silence the speech of students and parents who disagree with the school on any topic.

Moreover, the legislature specifically refused to add SOGI categories to Michigan's bullying law (MCL 380.1310b). Therefore, the question remains: Under what authority does the Williamston School Board believe it can override the legislature?

Policy 5031 Section 504/ADA Policy. Paragraph E.1. refers to students with "gender identity disorders." If gender identity is a "disorder", as admitted in policy 5031, why celebrate and affirm this disorder by bestowing special legal rights under the proposed Transgender Policy?

In addition, the proposed exercise of governmental power here:

1. causes division in the community.
2. is coercive in its application to businesses and families;
3. imposes burdensome regulatory, administrative, financial and other economic costs on the business community;
4. is unconstitutionally vague and overbroad;
5. unconstitutionally infringes upon a citizen's free speech and free exercise of religion; and
6. violates precepts of good governance.

As explained below, such action violates both the United States and Michigan Constitutions. These policies and non-discrimination laws, as enforced around the country, are not merely requests for fairness toward supposedly aggrieved individuals. Rather, they are being used as a club to bludgeon and bully into submission those who disagree with, and will not affirm, their conduct choices.

With so much at stake, it is important for policy makers to take a serious look at the interests of all citizens before making such sweeping policy changes. These proposed policies are wholly inconsistent with our fundamental principles of good government and the rule of law.

The extremely vague and overbroad categories, if enacted into policy, encourage and enable discrimination to occur against parents and children. It authorizes arbitrary government action forcing businesses and citizens of faith to make a terrible choice: act against their constitutionally protected consciences and their sincerely held religious beliefs, or face the full force of governmental and regulatory power in protracted legal battles, both administratively and in the courts. The following discussion outlines how these policies are both unconstitutional and divisive public policy, as well as how it will cost the school district, businesses,

religious institutions, and parents untold financial expenses and costs.

THE PROPOSED POLICIES CAUSE DIVISION

The policies do not respect all opinions and viewpoints. Rather, they elevate one ideology as superior over all others.

Across the country, LGBTQ proponents target people of faith, forcing them to either violate their religious conscience or be coerced into submission to the new orthodoxy. Thus, this new policy will be used as a sword not a shield.

COERCION OF THE BUSINESS COMMUNITY

If enacted, the proposed new policies empower the school board to refuse to do business with organizations that will not accept the new orthodoxy. Thus, the potential for bullying and the loss of business exists if a citizen has the courage to contest the new policy. Is the current school board truly prepared to give the proponents of these new categories the ability to harm those in the business community who honestly disagree with them?

Another argument by proponents of the new categories is that LGBTQ individuals are in the same position as African-Americans and the civil rights issues they faced. This argument is flawed on many levels. Comparing the dilemmas of the LGBTQ community to the centuries of discrimination faced by African-Americans is myopic and dismissive of our country's cultural and legal history.

The antidiscrimination laws of the Civil Rights Era were a direct response to the systemic discrimination required by law in the Democrat controlled southern states during the Jim Crow era. No similar laws mandating discrimination based upon sexual orientation, gender identity, etc., exist today.

The disgraces and unspeakable privations in our nation's history pertaining to the civil rights of African-Americans are unmatched under the law. No other class of individuals, including individuals who are same-sex attracted, have ever been enslaved, or lawfully viewed not as human, but as property. The Federal Government has never valued gay or transgendered persons as 3/5 of a person. None have ever lawfully been forced to attend different schools, walk on separate public sidewalks, sit at the back of the bus, drink out of separate drinking fountains, been denied their right to assemble, or denied their voting rights. The legal history of these disparate classifications, i.e., immutable racial discrimination and same-sex attraction, is incongruent.

Is the Williamston School Board really prepared to take sides in this social debate to the extent that it will hand over to one side the ability to harm or oppress the other? Is the Board prepared to codify the legal bullying of businesses, religious institutions, parents and children who believe in traditional ideas of family and human sexuality? The ramifications of such a position should be carefully considered.

EXCESSIVE REGULATION, LITIGATION, AND COSTS TO BUSINESS

As seen everywhere around the country, passage of policies and laws adding the new categories markedly increase litigation and other costs for the business community. From increased regulation to administrative hearings to lawsuits over bathroom accommodations, businesses are being barraged by attacks from the proponents of the new categories. This is much more than trying to prevent a member of some particular group from being fired from his or her job. In fact, no evidence exists that such discriminatory terminations routinely occur.

From bed and breakfast owners to bakers to florists to counselors to photographers, small business owners and citizens are under assault for having the courage to stand up for their beliefs. Citizens are forced into a choice no one should ever have to make: either violate their religious conscience or close their business and acquiesce to the new policy. Proponents use these additional categories as a sword, not a shield. The following examples provide just a small sampling of the exploding litigation concerning this issue:

- **CITY THREATENS TO PROSECUTE, JAIL AND FINE PASTORS – IDAHO – 2014:**
  - Two ordained ministers who run a wedding chapel in Coeur d'Alene, Idaho, were threatened by city officials to either marry same-sex couples under that city's SOGI law or face prosecution for violating the law.
  - If convicted, they would face up to 180 days in jail and a fine of $1,000.00 per day for each "violation." If the pastors refused to perform the same-sex marriage for one week they would face over three years in jail and $7,000.00 in criminal fines.
  - The pastors filed a federal lawsuit seeking a restraining order preventing the city from forcing them to violate their religious conscience.

Is the Williamston School Board prepared to force parents, students, ministers, priests, rabbis, and imams to violate their faith and conscience by acquiescing to these policies?

- **JUST COOKIES – INDIANAPOLIS, INDIANA – 2010:**
  - Just Cookies, Inc. was a family owned business which David and Lily Stockton operated with their daughters.
  - The family business was found to be in violation of a SOGI law when the owners declined to make cupcakes for "National Coming Out Day" because they didn't want to support an event with which they disagreed.

If a Jewish bakery refused to make cupcakes with swastikas on them for an Anti-Israel Rally, would anyone believe they should be forced by the State to violate their beliefs and make the cupcakes?

- **ELANE PHOTOGRAPHY – NEW MEXICO – 2013**
  - Elaine and Jonathan Huguenin operated a photography business and declined to photograph a lesbian commitment ceremony because to participate in such an event would violate their sincerely held religious beliefs regarding marriage. Even though the business did photography for the LGBTQ community in the past and even though the couple found another photographer who did the shoot for less money, the couple still sued Elane Photography.
  - The New Mexico Human Rights Commission found that the business violated the law and ordered the business to pay nearly $7,000.00 in attorney fees to the couple.
  - The case went all the way to the New Mexico Supreme Court where the Court ruled that religious rights must yield to any "anti-discrimination" rights. The Court stated that the business owners must surrender their right to freely exercise their religion as "the price of citizenship."

If a gay photographer did not want to participate in a Traditional Marriage Rally, would anyone believe that he should be forced by the state to participate in that event in violation of his conscience?

Is the Williamston School Board prepared to enact new policies that require parents and children to surrender their right to live according to their conscience as a price of citizenship?

- **SWEET CAKES – OREGON – 2013**
  - Sweet Cakes declined to make a wedding cake for a lesbian couple because of their sincerely held belief that marriage is the union of one man and one woman. Even though the lesbian couple found multiple other bakeries eager to celebrate their union, the Oregon Bureau of Labor and Industries found "substantial evidence" that the bakery violated the law.
  - The baker is now facing hundreds of thousands of dollars in fines. The bakery had to close its doors and the owner's children received death threats.
  - Labor Commissioner, Brad Avakian, stated that it is the State's desire to "rehabilitate" the owner's personal religious views so that they could be allowed to re-open.

Does the Williamston School Board want to become the arbiter of which religious views are permissible and allowed? Is the Board prepared to force parents and children to be "rehabilitated" in such a manner?

- **HANDS ON ORIGINALS – KENTUCKY – 2012**
  - Hands On Originals, a local T-Shirt printing small business, was found by the Kentucky Human Rights Commission to have violated the law when the business declined to print T-Shirts endorsing a Gay Pride Festival. The owner could not in good conscience celebrate homosexual conduct.
  - It should be noted that Hands On Originals employs gay workers and had filled past orders (which didn't violate its religious conscience) for customers who it knew identified as homosexual.
  - The Kentucky Human Rights Commission ruled that the small business owner, whose religious views were found to violate the Kentucky SOGI law, be ordered to attend re-education training (Frequently referred to as diversity training).

If an African-American printer declined to print T-Shirts for a Jim Crow rally, should the printer be forced to violate his or her beliefs?

If a Muslim printer declined to print T-Shirts with an image of Mohammad, should the Muslim be forced to violate his or her religious beliefs?

- **BAKER V. WILDFLOWER INN – VERMONT – 2011:**
  - A private bed and breakfast/reception hall declined to allow their property to be used for a lesbian marriage reception based on their religious beliefs.
  - As part of a settlement agreement to dismiss the lawsuit, the bed and breakfast was forced to pay $10,000.00 to the Vermont Human Rights Commission and $20,000.00 to a charitable trust to be dispersed by the lesbian couple.

If a Muslim declined to allow his property to be used for a NAMBLA (North American Man/Boy Love Association) reception because he disagreed with a man having a "sexual orientation" for young boys, should he be forced to violate his religious conscience?

- COUNTRY MILL – MICHIGAN – 2017
  - Country Mill, an apple orchard in Charlotte, Michigan, was banned by the City of East Lansing from having a booth at the farmer's market because it refused to allow same-sex marriages to occur at its facility because it violated their sincerely held religious beliefs. A federal judge recently granted an injunction against the City and ordered the return of Country Mill to the farmer's market.

Is the Williamston School Board prepared to fight similar litigation based upon excluding religious businesses under the proposed policies?

This is just a small sampling of the proliferation of lawsuits around the country based on such laws. All the above illustrates the tremendous cost to the School Board, the business community, religious institutions, and parents, that will occur if the new policies are enacted.

All these cases demonstrate the proponents' true intention is to attack the business and religious community under the guise of nondiscrimination in order to silence them and force great financial hardship upon them, simply for disagreeing with their conduct.

If enacted, the Board will inevitably promulgate and enforce administrative rules implementing the new standards against businesses, religious institutions and other alleged violators of the new categories. This will entail messy entanglements between the school and religious organizations who will challenge a policy that violates their religious rights and freedoms. Beside the added expense to the school of such regulatory requirements there will be a great expense and cost to the business community when it is attacked by proponents claiming the protection of these new categories. The impact will be especially great on small businesses who may not have the financial wherewithal to withstand such attacks. Many small business owners will face the choice of either submitting to the demands of the offended, or face years of litigation expenses and the potential loss of business. Is it fair to a small business owner to permanently lose business over, for example, alleged hurt feelings?

All of the above examples in this section demonstrate how proponents are not using these types of policies and laws as a shield, but rather are using the new policies and laws to attack those with whom they disagree.

UNCONSTITUTIONAL VAGUENESS

The Due Process Clauses of the United States and Michigan Constitutions guarantee individuals the right to prior notice of what constitutes prohibited conduct. If a policy is vague, ambiguous, or indefinite so that it is impossible to determine what it requires, the courts will hold the policy unconstitutionally void for vagueness, and therefore unenforceable. The meaning of a policy must be clear enough so that ordinary persons who are subject to its provisions can determine what acts will violate it and so they do not need to guess at its meaning. An unambiguously drafted policy affords prior notice to the citizenry of conduct proscribed. In this way the rule of law provides predictability for individuals in their personal

and professional behavior. A fundamental principle of due process, embodied in the right to prior notice, is that a policy is void for vagueness where its prohibitions are not clearly defined. Although citizens may choose to roam between legal and illegal actions, governments of free nations insist that policies give an ordinary citizen notice of what is prohibited, so that the citizen may act accordingly.

Parents, business people and religious organizations would be in an impossibly precarious position to try to discern what constituted discrimination under these new categories. Because accusers with an agenda can use the ambiguity of the proposed categories to decide, after the fact, what is prohibited or what offends them, the possibility of people of faith facing oppressive action is limitless. The accusers are only limited by their own imagination and ability to come up with new ways to enforce the new categories.

The proposed new, protected categories are incapable of clear definition. A person can be accused and charged under the vague terms of such categories for merely expressing a religious belief that another individual internally defines as being offensive to him or her. The determination of the "wrongful act" is subjective and in the eyes of the beholder. The determination of whether a person is a member of one of the new protected classes is subjective and in the eye of the beholder. A person cannot know if their conduct is prohibited until after the fact. Thus, even if a person or business possesses no intent to offend or discriminate, the alleged victim can commence enforcement of this policy and subject the accused to legal costs and sanctions pursuant to the pollicy.

For example, a category like "gender expression" is beyond understanding legally. It is impossible to know what such language, however it is defined, truly means. Categories like "gender identity" and "sexual orientation" have meaning way beyond just homosexuality. Therefore, an accuser gets to define what this language means without limit by simply filing charges alleging some statement or action violates the policy.

Moreover, these categories would appear to protect any relationship or grouping of people, in any combination, in any amount. Would this include Polygamy? Incest? Ten people living together? These are not rhetorical questions. The plain language used by proponents of the new categories appears to protect any arrangement of any kind. The proponents' true purpose is to redefine deeply rooted legal and scientific understandings.

For example, some definitions of "sexual orientation" routinely list different lifestyles and then qualify the list by stating, "by orientation or practice, whether past or present." Because the sexual orientation of the relevant group is vaguely defined, no reasonable person can understand what it means. Sexual orientation comes in many forms. Does the policy cover groups of people with various sexual orientations? Does it cover, for example, the conduct of a group of people whose sexual orientation is for extramarital sex (swingers/adulterers)? Does it cover the conduct of a group of people whose sexual orientation is for multiple partners within a marital relationship (polygamists)? Does it cover numerous other groups whose activities are currently illegal?

Given the absence of any clear definition, the ambiguous language of the policies arguably could include any and all such groups. Will an otherwise law abiding parent, student, or business therefore, face enforcement action for calling pedophilia or polygamy bad or for refusing to hire or accommodate such a person? An individual's inalienable right to due process and notice forbids such government-imposed guessing games, especially when, as here, the public

has no way of predicting what morally-relative choice the proponents will choose when making a decision to take enforcement action against an alleged perpetrator. Thus, the conduct prohibited by such proposed categories wholly depends on the whim of the accuser, based upon their perceived feelings—rather than a clearly expressed standard articulated in the policy. Again, who determines this? Such language is nebulous at best and citizens are left to guess at the meaning.

Under the definition of "gender identity/expression," the usual definitions include "A person's actual or perceived gender," their "self-image," and "expression." This is internal to the person. How is an accused supposed to know how someone else perceives their own gender? Such categories literally require mind reading on the part of the accused. It is unconstitutionally vague and overbroad. Reasonable people will not be able to agree on what such a category in the policy means.

The potential means by which the school can apply the law to selectively challenge a business, parent or student's actions vividly illustrates why the United States and Michigan Constitutions prohibit such ambiguity. Here the inherent vagueness enables the board to make a personal choice to elevate the right of one protected group (with a particular sexual orientation, gender identity, etc.), over the right of another protected group (with a sincerely held religious conscience). In using the inherent vagueness of the policy to make a morally-relative determination, school officials at any time can arbitrarily transform a business and citizen's protected expression of sincerely held faith-based beliefs, into an actionable case. Discerning prohibited conduct in such a manner, *after* the fact, violates the citizen's Constitutional right to prior notice of prohibited conduct.

FREE SPEECH/FREE EXERCISE OF RELIGION

The proposed new categories have so many potential free speech and free exercise of religion violations it goes beyond the scope of this short brief. In effect, the proposed new categories will prohibit persons with traditional views of family and sexuality from exercising their constitutionally protected free speech and free exercise rights. The First Amendment and Michigan's Constitution bar the state from "prohibiting the free exercise [of religion]; or abridging the freedom of speech…"

The proposed new categories violate these rights. It prohibits the free exercise of religion by restricting, regulating, and discriminating against persons with traditional views on sexuality and family. It abridges the freedom of speech in a content based way for all the reasons stated below.

In *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992), the U.S. Supreme Court struck down a city law that levied special restrictions on individuals who expressed views on the subjects of race, color, creed, or gender. The Supreme Court held that such a law facially violates the First Amendment right to freedom of speech because "the First Amendment does not permit [the city] to impose special prohibitions on those speakers who express views on disfavored subjects. *Id.* at 391. The Court further pointed out that the law displayed the "city council's special hostility towards the particular biases thus singled out. That is precisely what the First Amendment forbids. *Id*. at 396. The St. Paul law struck down by the Supreme Court and the proposed new categories share the same unconstitutional features.

The policies are clearly aimed at speech in that they give "coercion, name-calling and taunting" as examples justifying the enforcement of the policy. It is obvious

that free speech is to be sacrificed at the altar of political correctness. The First Amendment implications could not be clearer. Is it harassment to merely make a statement that someone else perceives as offensive because of their own internal definition of their sexuality? What does "harassment" mean? The policy states it includes "nonverbal, verbal, or written" actions. Is the school board really prepared to handle complaints against parents, students and businesses that speak on these issues in a manner that offends someone?

Imagine a conversation in a school hallway where a student says that he believes that Jesus is the only way to God, or that he does not believe that civil partnerships are pleasing to God, or that homosexual conduct is not condoned in the Bible. Another student hears this and files a complaint with the school board for discrimination under the new categories and policies. Imagine a parent expressing similar statements at a school sporting event. Enforcement action is then filed under this policy. Is the school board prepared to become the arbiter of these issues?

Moreover, the U.S. Supreme Court struck down laws that infringed upon Freedom of Association based upon the expressive message of a group. Freedom of Association protects the right to exclude others where the exclusion is based upon the expressive message of the group. See e.g., *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995); *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000). Freedom of association includes the right not to associate.

Our nation's legal traditions—including the Constitution itself—clearly affirm the importance and preeminence of religious liberty. James Madison, the drafter of the Bill of Rights, recognized that the duty to follow the dictates of one's conscience concerning religion is "precedent, both in order of time and in degree of obligation, to the claims of Civil Society" and civil law. Madison thus stated that "Religion . . . must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right." Thus, the right to free exercise of religious conscience must necessarily include the right to act pursuant to such conscience. Put differently by Joseph Story, one of our nation's earliest and most prominent Supreme Court justices: "The rights of conscience are . . . beyond the just reach of any human power. They . . . [must] not be encroached upon by human authority" such as that embodied in the civil law. Because they realized the value and significance of religious liberty, our nation's Founders included robust protection for the free exercise of religion in the First Amendment enshrined in the Bill of Rights. By doing so, they confirmed that religious liberty was a "fundamental maxim of free Government," which should (and eventually would) "become incorporated with the national sentiment."

By selecting the phrase "free exercise" of religion for inclusion in the Constitution, instead of a mere freedom to worship or believe, the Founders declared that religious freedom includes not only religious adherents' right to hold their beliefs or opinions; it also guards their religiously motivated conduct against government punishment or coercion. Government officials should therefore refrain from burdening their constituents' religious exercise, an inviolable and intensely personal right, through the passage and application of nondiscrimination policies and laws. Indeed, James Madison declared that politicians "who are guilty" of encroaching upon religious liberty "exceed the commission from which they derive their authority."

While it is true that proponents of the new categories may be hurt or offended by

the refusal of a parent, student or business to participate in and endorse their particular conduct or event, the harm imposed upon the alleged violator of the new policy is much greater and more concrete. The gay or transgendered person can easily go to the next business in the phone book or on-line. But the alleged business or individual "perpetrator" faces the pernicious choice to either capitulate and violate their sincerely held religious beliefs or face enforcement action under the school's policies. When weighing those competing interests, it is clear which side is the most significantly harmed.

The failure to protect citizen's free speech and free exercise rights will lead to more divisiveness and litigation. It will further improperly elevate the new categories (and the political agenda of the proponents) over the rights of all the other parents, students and businesses with different religious beliefs or values. This is not fair and equal treatment. This is the granting of special rights at the expense of other's rights.

ENFORCEMENT OF THE PROPOSED POLICIES UNDERMINES PRECEPTS OF GOOD GOVERNANCE

Arbitrarily enforcing such vague policies undermines good governance under the rule of law. A principal precept of the rule of law is that it provides predictability for individuals in the conduct of their affairs. As discussed above, vague provisions provide no such predictability and opens the door for government authorities to decide what the policy means *after* the conduct occurs. That which is prohibited becomes clear only *after* the school board selectively enforces the vague policy against someone—based upon the board's own morally relative construal of the ambiguous language. To be sure, the exercise of such discretion provides the means for proponents of the new categories to efficiently advance a political agenda. The insidious consequences of doing so, however, include the deterioration of fundamental democratic principles and good governance under the rule of law.

In the case of a vaguely worded policy, enforcement can, without prior notice of the conduct prohibited, lead to a citizen's loss of property and a free public education. Moreover, if the policy vaguely regulates free expression, an ominous chill on the exercise of fundamental freedoms accompanies its promulgation. The great potential for abuse through arbitrary enforcement of these new provisions is reason enough to oppose their enactment. Compelled by the piercing chill of an unpredictable potential enforcement action, citizens cease exercising their basic liberties. They fear to speak or exercise their religious freedom.

In a pluralistic society, numerous conflicting points of view exist. Historically, therefore, the perpetuation of a functional republic requires free and open debate. The current prosecution and persecution of Christians around the world illustrates, however, just how efficiently government can use a vague policy or law to suppress free expression and the free exercise of religion.

The potential for unpredictable legal action chills future religious expression of parents, students, businesses, and charitable and religious groups. Fearing enforcement action, citizens and religious leaders will inevitably self-censor sincerely held faith-based beliefs—and may even cease expressing anything at all.

The proposed categories also communicate an ominous admonition to community business leaders, journalists, academics, and anyone expressing a point of view different from that held by the proponents. In order to maintain comity between those of differing viewpoints and ensure public order, all school boards must first recognize these universal constitutional freedoms.

CONCLUSION

In a constitutional republic like ours, freedom of religion, freedom of speech and expression, and freedom of association are not needed to protect the ideas and rights of people with whom the government agrees – it is needed to protect those with whom the government does not agree. Make no mistake about it. Those groups advocating for the enactment of new categories in the school board's policies will wield these policies as a weapon capable of destroying their opponents in this cultural debate on these issues. Do not believe any protestations by them that this is not the case. One merely needs to look at the scores of cases being brought against churches, businesses and individuals around our country based upon these types of laws. These laws are being used to try and silence and financially cripple those who dare to adhere to a different viewpoint and oppose their agenda. The irony is that, while trumpeted as non-discrimination policies, these policies would clearly discriminate against, and violate the conscience of, many of the parents, students, and business owners of the Williamston Community.

The impetus for adding new categories isn't really about civil rights, rather, it is about civil acceptance of LGBTQ conduct through the force of law.

Even if the Williamston School Board is in agreement with and supports those intent on enacting these policies, that does not give it the right to trample on the Constitutional rights of others. The test of a properly functioning republic is not whether the government protects the speech and religious rights with which it agrees – it is whether it will protect the speech, religious rights and the economic liberty of those citizens with whom it does not agree. Instead of censuring or punishing speech and religious rights, the answer is always to have more speech and the free exchange of ideas – at least in a republic that values true freedom, pluralism, and diversity. Selective enforcement and punishment of citizens under these proposed policies sends a bitter chill throughout our country. Promulgating vague policies that allow for arbitrary and selective enforcement is never an appropriate public policy for any institution that values good governance under the rule of law.

For all the above-stated reasons, we urge that the Williamston School Board not create special classifications that unfairly and unconstitutionally deny constitutional rights to parents, students, businesses and religious organizations in the community.

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