**Exhibit A**

**Case No. 2:25-cv-02307-DDC-ADM**

# In The United States District Court For The District of Kansas

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**BRIEF OF AMICI CURIAE**

**IN DEFENSE OF THE 1964 CIVIL RIGHTS ACT**

**AGAINST TRUMP v. CASA**

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- 42 U.S.C. § 2000e-2(k) (Civil Rights Act of 1991)
- 42 U.S.C. § 2000e-5(g)
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Congressional Record, 110 Cong. Rec. 14270 (1964).

NAACP Legal Defense Fund, Statement on *Trump v CASA* Available at https://naacp.org/articles/naacp-statement-trump-v-casa

President Lyndon B. Johnson, Howard University Commencement Address (June 4, 1965)

## SUMMARY OF ARGUMENT

Amici defend four fundamental principles of Title VII of the Civil Rights Act of 1964: the right of individual, non–class action plaintiffs to allege, claim, and seek relief for (1) disparate impact, (2) systemic retaliation, (3) systemic remedies for systemic harm, and (4) the eradication of company-wide employment discrimination. These foundational protections now face an existential threat from Defendant Walmart's reliance on the Supreme Court's decision in *Trump v. CASA*. If that interpretation prevails, it will undermine the rule of law, contravene the intent of Congress, and strip away civil rights protections in employment for generations to come. In light of the gutting of the 1965 Voting Rights Act, as argued in the recent Supreme Court case *Louisiana v. Callais* (2025), Amici foresee the danger of a domino effect eroding the milestone civil rights protections of the 1960s—and therefore **draw the line at 1964**.

## STATEMENT OF INTEREST FOR AMICI CURIAE[1]

Amici are civil rights scholars, attorneys, advocacy organizations, and members of Congress who have devoted their careers to enforcing federal civil rights statutes and protecting constitutional equality. Some have directly litigated against the Trump administration's rollback of disparate impact liability. Others have challenged broader efforts to weaken diversity, equity, and inclusion initiatives, recognizing such efforts as a direct threat to the enforcement of civil rights and to American democracy itself.

Amici have a vital interest in this case because defendants' interpretation of *Trump v. CASA*—if accepted—would radically narrow Title VII, effectively abrogate its disparate impact provision, and extinguish the remedies that Congress expressly authorized to eradicate systemic discrimination. Amici emphasize that their defense is of Title VII itself, not the individual claims of any one plaintiff. The statute guarantees broad equitable and systemic remedies regardless of the particulars of a single employment dispute. The statutory authority under Title VII for systemic relief exists independently of this Plaintiff's factual allegations. While courts remain constrained by *Trump's* complete-relief principle, that principle does not restrict Title VII, because systemic discrimination may require systemic relief to provide complete relief to the party before the Court, and is essential to ensuring the statute's nationwide enforcement authority and integrity.

## ARGUMENT

### I. Background – Eberra v. Walmart Inc., et al. (D. Kan., No. 2:25-cv-02307-DDC-ADM)

[1] Amici curiae state that this brief was drafted by Plaintiff, proceeding pro se, and adopted by Amici in support of the preservation of Title VII. No Amici authored this brief, and no person made any monetary contribution to its preparation or submission. Amici stand united in defense of the statute itself, and take no position on the factual merits of the underlying dispute between the parties; their sole interest is in preserving the vitality and enforcement mechanisms of Title VII as enacted by Congress.

Amici reference allegations from Plaintiff's complaint (Doc.1) *solely* to provide context, in our defense of the statutory framework. Plaintiff Mark Eberra filed a racial discrimination lawsuit against Walmart Inc., et al. under Title VII of the Civil Rights Act of 1964, alleging, inter alia, disparate impact and systemic malice on June 13, 2025. In his complaint, he alleges an unlawful racial employment hierarchy where the top tier executive leadership team was comprised of whites only and remained segregated and stratified by race, with Black and brown employees composing the bulk of lower-level hourly roles, and whites maintaining nearly all positions in upper management. Doc. 1, 54, 55.

In his Prayer for Relief, plaintiff presented evidence of the biased and discriminatory administration of Walmart's computerized testing and promotion policies that had a disparate impact on minorities and served as the structural cement of Walmart's systemic racism and practice of white supremacy. Doc.1, 55, 56. Plaintiff alleges this de facto segregation policy had remained unchanged since Sam Walton founded the company in the Jim Crow era of Rogers, Arkansas, in 1962. Doc. 1, Exhibit A-B.

Plaintiff contends Walmart failed to overcome these plausibly pled facts in his original complaint. Walmart, in its motion to dismiss the case, invoked President Donald Trump's overt campaign to roll back civil rights for all Americans and cited the Supreme Court case of *Trump v. CASA*, June 25, 2025, as binding authority. Specifically, Walmart relies on this case, which limits the power of federal judges to issue universal injunctions, to make arguments that undermine and, in effect, gut the 1964 Civil Rights Act, particularly Title VII, its disparate impact provision, and systemic, structural, and equitable relief remedies.

## II. Walmart's Motion to Dismiss in Light of *Trump v. CASA* Raises Questions with Consequences Beyond This Case

In an alarming act, Walmart argued, through implication, that the historic, binding precedent in cases, that upheld the 1964 Civil Rights Act was no longer good law in light of *Trump v. CASA*. Defendants invoke *Trump v. CASA* to imply that courts lack authority to grant systemic relief in disparate impact cases, and that the precedent underpinning Title VII may no longer be valid. See Defs.' Reply in Supp. of Mot. for Partial Dismissal, Doc. 32, at 5 [hereinafter "Defs.' Reply"] (presuming that the cases Plaintiff cites, the youngest of which is 38 years old, would survive *Trump*).

However, based on the law what Walmart *actually* "presumes" to be true must be rejected as false. *Trump v. CASA* concerned the scope of universal injunctions, not the substantive rights of employees under Title VII. The decision did not abrogate the Civil Rights Act of 1964, nor Congress's explicit codification of disparate impact liability in the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071.

Defendants' argument, if accepted, would destabilize half a century of binding precedent. Cases such as *Griggs v. Duke Power Co*., 401 U.S. 424 (1971); *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC*, 478 U.S. 421 (1986), which are pillars of the 1964 Civil Rights Act, have now been called into question by Walmart in a single motion that, if upheld, would spread through the federal circuits—ultimately working its way to the Supreme Court, where a Trump-appointed majority is waiting to rule in their favor. See Justice Ginsburg's observation that previous "decisions by the United States Supreme Court

… sharply cut back on the scope and effectiveness of [civil rights] laws,[2]" which in turn required congressional intervention[3].

While amicus briefs are typically filed in appellate courts, and particularly on appeal to the Supreme Court, Amici cannot afford to wait. The time for urgency is now. Allowing Walmart to interpret and use *Trump v. CASA* in such an invidious manner must not be permitted to prevail. This amicus brief sounds the clarion call to all civil rights champions, leaders, and advocates to stand up and fight to defend the 1964 Civil Rights Act and save our democracy. Accordingly, we, the undersigned Amici, stand in uniform support of the 1964 Civil Rights Act, Title VII, its disparate impact provision Section 703(k), and Section 706(g) regarding systemic discrimination and equitable relief.

**III. Title VII's Text and History Are Settled Law**

Walmart's argument elevates Plaintiff's case from an individual dispute between an employee and employer to a nationalized case about whether courts retain the authority granted by Congress in Title VII: to order systemic remedies for systemic discrimination. Defendants argue that *Trump v. CASA* strips courts of that injunctive power, leaving only individualized remedies even when systemic reforms are necessary to provide complete relief.[4]

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[2] *Ricci v. DeStefano*, 129 S. Ct. 2658, 2698–99 (2009) (Ginsburg, J., dissenting)

[3] Consequently, Congress enacted the Civil Rights Act of 1991 to restore the disparate-impact framework and other systemic remedies curtailed by the Court. Amici emphasize that although such safeguards are embedded in our constitutional structure, it can take decades to secure their restoration—leaving entire generations deprived of their civil rights in the intervening years.

[4] See Defs.' Memorandum in Supp. of Mot. for Partial Dismissal, Doc. 22, at 9, arguing that in light of *Trump,* injunctions may not "offer complete relief to *everyone* potentially affected by an allegedly unlawful act."

However, Congress spoke clearly in 1964 and reaffirmed those protections in later amendments, including the Civil Rights Act of 1991.

**A. Title VII Expressly Authorizes Broad Equitable Relief, Including Structural Reforms**

Congress codified in § 706(g) that: "the court may order affirmative action and *any* … *equitable relief* as the court deems appropriate." 42 U.S.C. § 2000e-5(g)(1) (emphasis added). This language is deliberately broad, granting courts the flexibility to order systemic and equitable remedies where necessary. The line of precedent as follows supports the statute.

*Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975) (holding that Title VII relief "must be adequate to make whole the victims of discrimination" and that courts must "fashion the *most complete relief possible*") (emphasis added).

Justice Ginsburg described *Griggs* and *Albemarle* as the "twin pillars of Title VII" — she wrote, "standing on an equal footing, these twin pillars of Title VII advance the same objectives: ending workplace discrimination and promoting genuinely equal opportunity." *Ricci v. DeStefano*, 557 U.S. 557, 624 (2009) (Ginsburg, J., dissenting).

Unlike *Griggs* and *Albemarle*, the Supreme Court in *Trump v. CASA* addressed only whether federal courts may issue universal injunctions binding non-parties. Furthermore, the Court emphasized that injunctions must be limited to what is necessary to provide "complete relief" to the parties before it, absent a certified class action.

But the Court did not disturb substantive statutory rights, nor did it suggest that longstanding remedies under Title VII were invalid. The majority left untouched the bedrock principle — that

the Constitution and statutes enacted by Congress bind everyone "from the President on down." That phrase originates from Justice Jackson's dissent, which the majority itself quoted.

To strip this Court of its equitable authority would render federal civil rights statutes toothless. As Justice Jackson further warned in *Trump v. CASA*, "In a constitutional republic such as ours, a federal court has the power to order the Executive to follow the law — and it must." (Jackson, J., dissenting). This applies to all, whether Chief Executive of the United States or Chief Executive Officer of Walmart. No individual or company is above the law.

**B. Title VII's Disparate Impact Protections Are Codified and Binding**

While the original statute did not explicitly use the term "disparate impact," 42 U.S.C. § 2000e-2(k) (added by the Civil Rights Act of 1991) expressly provides for disparate impact claims. The judicial foundation for this doctrine began with *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971), in which the Supreme Court held that employment practices neutral on their face but discriminatory in effect violate Title VII. Congress reaffirmed and codified disparate impact liability in the 1991 amendments.

This body of law cannot be undone by implication in a birthright citizenship remedies case such as *Trump*, which is unrelated to employment discrimination. *Trump v. CASA*, 602 U.S. ___ (2025), concerned universal injunctions against the federal government. It did not address Title VII, disparate impact liability, or the remedial scheme in § 706(g).

Nothing in *Trump v. CASA* overrules *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (recognizing disparate-impact liability for policies "fair in form but discriminatory in operation"), or foundational cases such as *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324,

336, 361 (1977), which recognized that systemic patterns of discrimination may warrant broad remedial relief (finding that "The Government sustained its burden of proving that the company engaged in a **systemwide pattern-or-practice** of discriminating against minorities" and authorizing "**injunctive orders or any other order necessary** to ensure the full enjoyment of the rights protected by Title VII") (emphasis added).

## IV. Complete Relief Requires Systemic Remedies When the Harm Is Systemic

Limiting relief to "individual-only" remedies where harmful policies are systemic provides only illusory relief. *Sheet Metal Workers v. EEOC*, 478 U.S. 421, 448–49 (1986) (upholding broad affirmative relief, including membership goals, where discrimination was systemic and persistent). In *United States v. Paradise*, 480 U.S. 149, 171 (1987), the Court expressed a "compelling interest" in ensuring that *systemic* discrimination harming individual employees be eradicated systematically (*emphasis added*). As the Court explained, "The race-conscious relief ordered by the District Court is justified by a compelling governmental interest in eradicating the Department's pervasive, *systematic*, and obstinate discriminatory exclusion of blacks." *Id*. at 167. The Court further recognized that *systemic* promotional procedures themselves may be discriminatory, "resulting in an upper-rank structure that totally excludes blacks." *Id*. at 166 (*emphasis added*).

Plaintiff alleges that Defendants do not deny the statistical reality of Walmart's past and current hiring and promotion percentages that are publicly displayed with an all-white executive leadership *hierarchy*[5]. (emphasis added) Plaintiff's allegations are directly analogous to

[5]As of 2025, Walmart's top-tier executive leadership includes no African Americans in the positions of Chairman, CEO, or President and has remained segregated for over sixty years since the company's founding. *See* Walmart Inc., *Leadership Team*, https://corporate.walmart.com/about/leadership

*Paradise*, where "discrimination at the entry level necessarily precluded blacks from competing for promotions, and resulted in a departmental *hierarchy* dominated exclusively by nonminorities." *Id*. at 168 (plurality opinion). (emphasis added) Defendants contend the Court lacks authority to order systemic and equitable relief under Title VII because foundational cases such as *Paradise* may no longer be viable in light of *Trump v. CASA*. See Defs.' Reply at 5. And therein lies the threat and danger to Title VII of the 1964 Civil Rights Act, which could, in effect, reduce the Act to a public-facing facade with no real systemic enforcement authority. Broad, structural remedies are needed to dismantle entrenched racial hierarchies—like the systemic discrimination Plaintiff alleges at Walmart—to ensure meaningful advancement for Black and brown employees and bring the workforce into compliance with Title VII.

To further illustrate this point, take the following hypothetical as an example. Let's say there is a plaintiff who can show that a racially segregated employment hierarchy and promotional track has existed company-wide since the company's founding 60 years ago, resulting in an all-white executive leadership team with no Black employees ever promoted to Chairman, CEO, or President. That same plaintiff can further prove, through statistics and testimony, that employees who complained of such discrimination were subjected to a retaliatory hostile work environment and eventually terminated, including the plaintiff. Limiting relief to reinstatement into the same toxic cultural conditions that originally caused the harm would not constitute complete relief. It may, in fact, subject the plaintiff to further harm, which in turn creates a *chilling effect* that dissuades the plaintiff from reapplying or seeking reinstatement. Under the broad and expansive view of Title VII, as intended by Congress, such conditions would establish a very clear and compelling link between the systemic culture and a specific, ongoing harm to the plaintiff. This connection would justify a request for broad, forward-looking injunctive relief. Likewise, in such

a scenario, injunctive relief requiring systemic, company-wide restructuring would not exceed "complete relief" under *Trump v. CASA* merely because it incidentally benefits non-parties. Indeed, the Court in *Trump* acknowledged that party-specific injunctions may incidentally advantage non-parties and that complete relief can sometimes require remedies that benefit others. See *Trump v. CASA*, citing *Trump v. Hawaii,* 585 U.S. 667, 717 (2018) (Thomas, J., concurring) ("To be sure, party-specific injunctions sometimes 'advantage nonparties,' but they do so only incidentally."). Again, Amici assert that these statutory principles stand independent of the outcome of any individual case. Amici here defend the statute itself. Where the wrong is systemic, meaningful relief must also be systemic.

## V. Walmart's Interpretation of *Trump v. CASA* Would Undermine Congressional Intent

### A. Walmart's interpretation of *Trump v. CASA* subverts the intent of Congress and weakens protections and remedies for systemic injustice.

Defendants argue, in light of *Trump*, that dismantling discriminatory systems would amount to a "universal injunction" benefiting non-parties, and therefore exceed judicial authority. See Defs.' Reply at 4 (arguing that an individual plaintiff lacks *standing* to obtain systemic or structural relief because such relief is more than *complete relief*). By that logic, if Dred Scott—the enslaved man who sued for his freedom in 1857 in the infamous *Dred Scott* case—had won his freedom, the institution of slavery could have continued in perpetuity because dismantling all of slavery would have been a "universal injunction" on the system of slavery itself, and thus "more than complete relief" for that one individual. While such reasoning was embedded in the heinous decision of *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), it is an absurdity to see it advanced in 2025 as the foundation of an argument to narrow civil rights protections and remedies, and allow large companies to circumvent the law in perpetuity.

While modern-day slavery is unlawful, so too are systemic employment hierarchies in which employees are segregated, classified, and stratified by race.[6] Amici support the position that such relics and customs from America's original institution and system of white supremacy must be eradicated as mandated by law in the 1964 Civil Rights Act. *Id*. at n 6. In *Dred Scott*, the Court infamously declared that African Americans "had no rights which the white man was bound to respect." *Id*. at 407. While Amici do not expect the Court in modern times to openly and explicitly state such a bias, any act to erode or limit the civil rights of African Americans would achieve the same effect. In 2025, however, the harm would reach all Americans, as the Civil Rights Act of 1964 was enacted by Congress to protect all people regardless of race, color, religion, sex, or national origin.

Accordingly, Walmart's reasoning is inconsistent with the Thirteenth Amendment, 42 U.S.C. § 1981 (Civil Rights Act of 1866), and Title VII of the Civil Rights Act of 1964—all of which were enacted to protect individuals from systemic hierarchies that replicate the badges and incidents of slavery.

**B. Congress Clearly Intended Broad Equitable and Systemic Remedies to Dismantle Discrimination**

Moreover, the Congressional Record clearly shows that the legislative history of the 1972 amendments to Title VII confirms the availability of broad equitable and systemic remedies for racial discrimination under the statute:

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[6] See § 703(a)(2) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(2). "It shall be an unlawful employment practice for an employer … to limit, segregate, or classify his employees or applicants for employment *in any way* which would deprive or tend to deprive *any individual* of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race." (emphasis added.)

> Congress was aware that both the Executive and Judicial Branches had used such measures to remedy past discrimination, and rejected amendments that would have barred such remedies. Instead, Congress reaffirmed the breadth of the court's remedial powers under § 706(g) by adding language authorizing courts to order '*any other equitable* relief as the court deems appropriate.' 42 U.S.C. § 2000e-5(g). The section-by-section analysis undertaken by the Conference Committee Report confirms Congress' resolve to accept prevailing judicial interpretations regarding the scope of Title VII." *Local 28 of Sheet Metal Workers' Int'l Ass'n v. EEOC*, 478 U.S. 421, 469–70 (1986) (emphasis added).

Amici agree with the legislative intent of Congress that equitable and systemic relief work together when individual harm stems from a pattern-or-practice. As Senator Humphrey emphasized in the Congressional Record:

> [A] pattern or practice would be present only where the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature. There would be a pattern or practice if, for example, a number of companies or persons in the same industry or line of business … practiced racial discrimination throughout all or a significant part of its *system*, or if a company repeatedly and regularly engaged in acts prohibited by the statute." 110 Cong. Rec. 14270 (1964) (emphasis added).

Denying an individual plaintiff the legal standing and right to pursue justice under Title VII of the Civil Rights Act of 1964 because he suffered from the harmful effects of discrimination stemming from a system-wide pattern-or-practice by a large company such as Walmart would not only abrogate the statute, it would also contravene the very intent of Congress.

## VI. Title VII's Systemic Remedies Derive from Congress's Commerce Clause Authority, Not the Statutory Limits on Universal Injunctions Announced in Trump v. CASA

Title VII's enforcement power rests squarely on the Commerce Clause, where Congress expressly authorized systemic and equitable remedies to eliminate discriminatory practices affecting interstate commerce. *See Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964) ("We have specifically upheld the power of Congress to use the commerce power to end racial discrimination."). By contrast, *Trump v. CASA* did not address civil rights statutes,

systemic discrimination, or the scope of Congress's Commerce Clause power. *Trump* was a remedial decision grounded in the Judiciary Act of 1789 and traditional equitable principles. It held only that federal courts ordinarily may not issue universal injunctions that extend beyond what is necessary to provide complete relief to the parties before the court. To the extent *Trump* refers to Article III, it does so only to reaffirm that remedies must be tailored to redress the plaintiff's injury—an established equitable principle that predates *Trump* and does not limit Congress's separate authority to authorize systemic relief under Title VII. Nothing in *Trump* suggests that the Judiciary Act silently narrowed Title VII's longstanding remedial scheme.

Accordingly, the remedial limits applicable to universal injunctions against government actors in *Trump* do not restrict Congress's power to authorize systemic remedies in private employment discrimination cases under Title VII. Furthermore, any attempt to stretch *Trump* into Title VII would be an untenable overreach that reverses decades of civil rights progress nationwide.

**VII. The Supreme Court has Endorsed a Broad and Expansive View of Title VII based on the Plain Language of the Statute**

Walmart contends that Plaintiff, as an individual employee, is "*distinguishable*" from, and thus cannot rely on, case law addressing class actions. See Defs.' Reply at 5, 6. Walmart's attempt to further gut Title VII by limiting systemic challenges to class actions fails for a fundamental reason: it contradicts the plain text of the statute. The legal basis for an individual's right to seek systemic relief is not implied; it is explicitly written into the law. Title VII makes it unlawful for an employer "to limit, segregate, or classify his employees... **in any way** which would deprive or tend to deprive **any individual** of employment opportunities... because of such individual's race." 42 U.S.C. § 2000e-2(a)(2) (emphasis added).

The statutory language is intentionally and unambiguously broad. Congress's choice of the phrases "**in any way"** and "**any individual**" is dispositive. It means that if a company's systemic practice—be it a biased test, a segregated promotional track, or a discriminatory corporate structure—harms even one person, that individual has a statutory right to challenge the entire unlawful practice that caused their injury. That could mean requiring a guilty employer to begin a c*orporate restructuring process to dismantle illegal, racially segregated employment hierarchies*[7].

The Supreme Court's textualist jurisprudence, embraced by justices across the ideological spectrum, confirms this reading. In the landmark decision *Bostock v. Clayton County*, Justice Gorsuch, writing for the majority, provided the controlling interpretive rule: "when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule." 140 S. Ct. 1731, 1747 (2020). Here, Congress established a broad rule protecting "**any individual**" from discriminatory practices applied "**in any way**." It included no exception requiring plaintiffs to form a class action to challenge a systemic harm. To accept Walmart's argument, this Court would have to invent an exception that Congress never wrote. Following *Bostock*, the Court must instead apply the broad rule as written.

The Supreme Court has long recognized that systemic or statistical evidence of discrimination is central to Title VII enforcement. In *Int'l Bhd. of Teamsters v. United States*, the Court held that plaintiffs may establish discrimination by proving that "racial discrimination was the company's standard operating procedure—the regular rather than the unusual practice." 431 U.S. 324, 336 (1977). Federal appellate courts, drawing on this framework, have recognized that systemic

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[7] See Doc. 1 at 6, Prayer for relief, describing systemic change and corporate restructuring.

evidence is not confined to class actions. See, e.g., *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1559 (11th Cir. 1986) (summarizing *Teamsters* and explaining that statistical and anecdotal evidence are integral to proving a pattern-or-practice of discrimination); *Davis v. Califano*, 613 F.2d 957, 961 (D.C. Cir. 1979) (citing *Teamsters*, 431 U.S. 324 (1977)) ("Just as statistical proof of a broad-based policy of employment discrimination provides reasonable grounds to infer that *individual* employment decisions were made in pursuit of that discriminatory policy, so too should statistical evidence be considered in an *individual* discrimination case.") (emphasis added).

As the NAACP Legal Defense Fund has cautioned, restricting injunctions to named parties alone would "**enable systemic injustice to continue unchecked, while those most harmed by it are forced to fight one by one in courts across the country**.[8]" The LDF warning applies with full force here: limiting Title VII's systemic reach to class actions alone would nullify Congress's intent and weaken one of the nation's most vital civil rights protections. Such a rule would exacerbate racial inequities, entrench segregated corporate hierarchies, and erode public confidence in the rule of law.

**VIII. Retaliation Protection Safeguards Title VII's Enforcement Power**

Another danger in allowing Walmart's use of *Trump* to bring into question the strength, breadth and vitality of the 1964 Civil Rights Act is its inevitable effect on the retaliation provision of Title VII, especially in systemic retaliation entrenched in a corporate culture.

The public record shows that Plaintiff alleges he directly engaged with Walmart CEO Doug McMillon thirteen times over nearly a year. Plaintiff initially wrote to Mr. McMillon to complain

[8] Available at https://naacp.org/articles/naacp-statement-trump-v-casa

of systemic racial discrimination and a retaliatory hostile work environment, requesting his intervention to remedy the problems and urging him to support a shareholder Racial Equity Audit that would provide objective evidence of systemic discrimination within Walmart.[9] (Mr. McMillon had initially written to Plaintiff urging that he, as a Walmart shareholder, vote against the Racial Equity Audit.) Instead, Plaintiff alleges, Mr. McMillon not only voted against the audit but also declined to provide relief.

As a result, Plaintiff contends he suffered escalating retaliation in response to his protected complaints. Whatever position one takes on the underlying allegations of discrimination alleged here, Amici emphasize a principle that transcends this case:

> **Every American has the right to oppose and complain of workplace discrimination in good faith, without fear of retaliation, as Congress expressly guaranteed in Title VII.**

Retaliation protections are not ancillary to Title VII—they are its lifeline. The statute's promise of equality in the workplace depends on employees having the courage to report violations without fear of reprisal. Courts and Congress have long recognized that retaliation is the single most significant barrier to enforcement, as reflected in EEOC data showing retaliation is the most frequently filed charge nationwide. If retaliation is permitted to hollow out enforcement, Title VII's guarantees become purely symbolic. Any interpretation of Title VII that disarms plaintiffs by limiting their ability to seek systemic remedies would, in effect, sanction retaliation by making the initial act of reporting systemic issues futile. By ensuring retaliation claims remain fully cognizable, the judiciary preserves the statute's practical force and affirms its central role in American civil rights law.

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[9] See Letter To Doug McMillon May 30th, 2024 https://defend1964.org/dougmcmillon

## IX. This Case Has Precedent-Setting Implications That Can Reconcile 150 Years of Racial Division

Amici recognize that this case has **precedent-setting** implications not only in the interpretation of **Title VII of the Civil Rights Act of 1964**, but also in the long-desired reconciliation of the remedies for the national wounds inflicted by slavery. On one end of the continuum is the message set by the Warren Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), to end segregation with "all deliberate speed." This was echoed by President Lyndon B. Johnson's historic address at Howard University following the passage of the Civil Rights Act of 1964:

> "You do not take a person who, for years, has been hobbled by chains, liberate him, bring him up to the starting line of a race, and then say, 'You are free to compete with all the others,' and still justly believe that you have been completely fair."
>
> — President Lyndon B. Johnson, Howard University Commencement Address (June 4, 1965)

On the opposite end of the continuum lies the prevailing view of the Court reflected in Chief Justice Roberts's majority opinion in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007): "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." A similar position was expressed in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), which effectively ended affirmative action in college admissions. There, Chief Justice Roberts wrote, "Eliminating racial discrimination means eliminating all of it." So the question remains: how does the Court navigate eliminating the consideration of race in employment without recognizing that race has been, and is still being, considered every day in the maintenance of racially segregated, classified, and stratified workforces that enrich corporations? Amici believe the correct approach is to follow the plain textual meaning of Title VII, which is broad, expansive,

and mandates immediate change. This includes, when necessary, ordering *temporary* affirmative-action remedies as effectively implemented in cornerstone cases like *United States v. Paradise*, 480 U.S. 149 (1987), which Walmart now questions in light of *Trump v. CASA*, 602 U.S. ___ (2025). Congress clearly intended the statute to be enforced against all companies, whether their workforce consists of fifteen employees or 1.6 million, such as Walmart. For at the end of the day, each and every employee has the same right to the "full enjoyment" of the protections of Title VII. And courts are required to, "Do no less than the law requires, which is to eradicate the continuing effects of past unlawful practices." *United States v. Paradise*, 480 U. S. 159

## CONCLUSION

From the infamous decision, *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), through the decades of harm and injustice inflicted by *Plessy v. Ferguson*, 163 U.S. 537 (1896), to the promise realized in *Brown v. Board of Education*, 347 U.S. 483 (1954), the judiciary has marked the milestones on the long and treacherous road leading to the Civil Rights Act of 1964. That Act secured fundamental freedoms for all Americans. Contrary to the stated position of Defendant, the Civil Rights Act of 1964 and its historic precedent not only "survives" Defs.' Reply, at 5, it thrives.

We, the undersigned Amici, stand united in defending the Act's protections under Title VII. By denying dismissal here, this Court continues the judiciary's vital role as guardian of civil rights, ensuring that the promise of Title VII remains more than a mere symbol and exists as a living reality for all. For the foregoing reasons, the Court should deny the motion to dismiss.

Amici appear here solely in their individual capacities. Institutional affiliations are listed for identification purposes only, unless the organization itself is expressly named as an amicus. The

undersigned Amici respectfully submit this brief in defense of Title VII of the Civil Rights Act of 1964. A complete roster of additional Amici appears in Appendix A, attached hereto and incorporated by reference.

**Individuals (Personal Capacity)**

*Affiliation listed for identification only.*