

No. 05-1803

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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JOHN W. MORANSKI,  
Plaintiff-Appellant,

v.

GENERAL MOTORS CORP.,  
Defendant-Appellee.

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ON APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

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**BRIEF OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL  
AND THE CHAMBER OF COMMERCE OF THE UNITED STATES  
AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE  
AND IN SUPPORT OF AFFIRMANCE**

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Short Caption: Moranski v. General Motors Corp.

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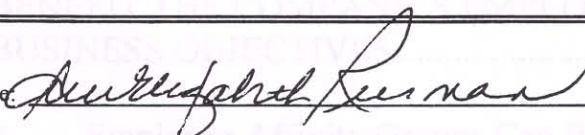
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The Equal Employment Advisory Council and The Chamber of Commerce of the United States respectfully submit this brief *amici curiae* contingent on the granting of the accompanying Motion for Leave. The brief urges this Court to uphold the decision below and thus supports the position of Defendant-Appellee, General Motors Corp.

### **INTEREST OF THE *AMICI CURIAE***

The Equal Employment Advisory Council (“EEAC”) is a nationwide association of employers organized in 1976 to promote sound approaches to the elimination of employment discrimination. Its membership includes over 325 major U.S. corporations. EEAC’s directors and officers include many of industry’s leading experts in the field of equal employment opportunity. Their combined experience gives EEAC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of equal employment policies and requirements. EEAC’s members are firmly committed to the principles of nondiscrimination and equal employment opportunity.

The Chamber of Commerce of the United States (“the Chamber”) is the world’s largest business federation, representing an underlying membership of over three million businesses and organizations of every size and in every industry sector and geographical region of the country. A principal function of the

Chamber is to represent the interests of its members by filing *amicus curiae* briefs in cases involving issues of vital concern to the nation's business community.

All of EEAC's members and many of the Chamber's members are employers subject to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, as well as other equal employment laws and regulations. As employers, and as potential respondents to charges of religious discrimination under Title VII, EEAC's and the Chamber's members have a direct and ongoing interest in the issues presented in this appeal. The district court below ruled correctly that, under Title VII, an employer does not discriminate against an employee based on religion when it refuses to sanction the formation of an affinity group based on a particular religious belief, as the employer's prohibition against such affinity groups applies across-the-board to groups that would promote or advance a position or belief concerning any religion or religions, and is not directed at a specific religion or religions.

As national representatives of business, EEAC and the Chamber seek to assist the Court by highlighting the impact its decision in this case will have beyond the immediate concerns of the parties to the case. Accordingly, this brief brings to the attention of the Court relevant matter that has not already been brought to its attention by the parties. Because of their experience in these matters,



EEAC and the Chamber are well situated to brief the Court on the relevant concerns of the business community and the significance of this case to employers.

### **STATEMENT OF THE CASE**

In order to create professional development opportunities for employees and serve as an information resource to the company, General Motors (“GM”) initiated “Affinity Group Programs.” These company-sanctioned employee groups are voluntary and are formed based on aspects of shared identity, such as gender, disability, race, or ethnicity. *Moranski v. General Motors Corp.*, 2005 WL 552419 (S.D. Ind. 2005), at \*1.

The groups provide their members with opportunities for mentoring, networking, career development, community outreach, and communication between employees from diverse backgrounds and GM management. *Id.* at \*1 n.1. GM supports Affinity Groups with certain resources such as meeting facilities, equipment, and funding to support the group’s goals. *Id.* at \*1.

In order to form and be recognized as an Affinity Group at GM, one or more employees must register with the company and adhere to the policies outlined in GM’s “Affinity Group Guidelines.” *Id.* at \*2. The guidelines set out the eligibility requirements for proposed groups, as well as how groups are to be structured and organized, and the types of activities groups may conduct. *Id.*

The guidelines state that in order to be recognized by GM as an official Affinity Group, the group must be open to all current, active, salaried, full-time employees who share the group's goals. *Id.* A group may not limit membership based on race, gender, or ethnicity even if race, gender, or ethnicity is the basis for the group. *Id.* The guidelines further state that groups will not be recognized as Affinity Groups if they are created for the purpose of pursuing a hobby, activity or common interest; opposing other Affinity Groups; promoting division of employees; or promoting or advocating a particular religious or political position. *Id.*

In December 2002, GM employee John Moranski submitted an application to GM to form a "GM Christian Employee Network" group. *Id.* GM denied Moranski's application based on its eligibility guideline which states that a group may not be formed based on promoting or advocating a particular religious position. *Id.* at \*3.

Moranski filed a claim with the Equal Employment Opportunity Commission (EEOC) in June 2003 and received his "right to sue" letter in January 2004. *Id.* In April 2004, he filed suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, claiming that GM violated the nondiscrimination provisions of Title VII by denying recognition of his proposed "GM Christian Employee Network Group." *Id.*

The district court granted GM's motion to dismiss, holding that GM denied Moranski's request to form a religious affinity group based on its policy of denying recognition to all affinity groups that advocate particular religious positions, and that this policy was not discriminatory under Title VII because it applied to all employees regardless of their religion or lack of religion. *Id.* at \*5.

This appeal followed.

### **SUMMARY OF ARGUMENT**

The district court properly concluded that GM's denial of Moranski's application for a religious affinity group did not violate the nondiscrimination provisions of Title VII. GM's prohibition applies to any group advocating a particular view or position on religion, and thus does not discriminate "because of" Moranski's religion in violation of Title VII. 42 U.S.C. § 2000e-2(a)(1).

Within the bounds of the law, employers are free to decide what, if any, affinity groups will benefit their employees and particular business objectives. Employee affinity or networking groups can provide significant benefits to both employees and employers. Employees who are members of affinity groups have opportunities to influence company decisions and further develop their careers. In return, employers leverage the resources within their affinity groups to further strategic marketing, communication, and human resources goals.

In order for affinity groups to be advantageous to the employee and employer, however, certain policies and criteria must be in place to keep the activities and practices of the groups focused on the company's mission and objectives. Without boundaries, employee groups may engage in activities that result in dividing the workforce or creating a hostile environment for other employees.

Each company's mission and goals are unique to its particular work culture and ethic. As it is well-settled law that courts will not second-guess employers' legitimate nondiscriminatory business decisions, *Wells v. Unisource Worldwide Inc.*, 289 F.3d 1001 (7th Cir. 2002) (holding plaintiff had failed to establish that employer's proffered non-discriminatory reasons for transferring the positions were pretextual), employers should be free to weigh the advantages and disadvantages of sanctioning affinity groups and reach their own conclusions. This includes determining what parameters should be placed on the formation of affinity groups, taking into consideration the company's own distinctive work environment.

To take this decision away from employers, and require those companies that choose to allow any affinity groups also to sanction affinity groups based on religious beliefs or non-beliefs, will have a chilling effect on the formation of employee affinity groups. Employers may determine that the risks associated with

sanctioning certain types of affinity groups, particularly the possibility of harassment claims, outweigh the benefits to both employees and employers that are derived from allowing affinity groups.

## ARGUMENT

### **I. THE DISTRICT COURT PROPERLY CONCLUDED THAT GM'S REFUSAL TO SANCTION AFFINITY GROUPS THAT ADVOCATE POSITIONS ON RELIGION DOES NOT VIOLATE TITLE VII'S PROHIBITION ON DISCRIMINATION "BECAUSE OF" AN EMPLOYEE'S RELIGION**

#### **A. Title VII Prohibits Employers From Discriminating Against Employees "Because of" Their Religion**

Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, prohibits discrimination against an individual "with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual's* race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (emphasis added). To establish a prima facie case of disparate treatment under Title VII, an employee must show: (1) he or she is a member of a protected class; (2) he or she was subjected to an adverse employment action; (3) the employer treated similarly situated employees more favorably; and (4) he or she was meeting his or her employer's legitimate employment expectations. *Peele v. Country Mut. Ins. Co.*, 288 F.3d 319, 326 (7th Cir. 2002).

As this Court has previously stated, "The central question in any employment-discrimination case is whether the employer would have taken the

same action had the employee been of a different race (age, sex, religion, national origin, etc.) and everything else had remained the same,” *Carson v. Bethlehem Steel Corp.*, 82 F.3d 157, 158 (7th Cir. 1996).

**B. GM’s Affinity Group Policy Of Refusing To Sanction The Formation Of Affinity Groups Based On Religious Beliefs Or Non-Beliefs Is Not Discriminatory Under Title VII Because It Applies To All Employees Regardless Of Their Religion Or Lack Of Religion**

GM’s Affinity Groups policy states that GM

will not provide recognition for groups that are created as a result of a common interest or activity only. . . . The following groups and activities will not be approved for registration as a GM Affinity Group: those that have a purpose of opposing other groups; groups whose agendas promote division of employees or that are exclusive of other GM employees; [or] those that promote or advocate particular religious or political positions.

*Moranski v. General Motors Corp.*, 2005 WL 552419 (S.D. Ind. 2005), at \*2  
(citation omitted).

GM denied Moranski’s application for a “GM Christian Employee Network” group not because he wanted to form a Christian group, but because the group was religious in nature, which is prohibited by the GM Affinity Group policy. GM would have taken the same action – denying recognition of an affinity group – whether the request was for the formation of a group based on Catholicism, Judaism, Hinduism, Atheism, Agnosticism, Gnosticism, Paganism, Satanism, or any other belief regarding religion, whether it be favorable, unfavorable, or neutral

to a particular organized religion or to organized religion(s) in general. GM prohibits the official sanctioning of *any* group that promotes or advocates a particular religious or political position. The GM guideline does not discriminate based on one religion versus another religion, as prohibited by Title VII, but rather applies to any group formed to take a particular position regarding religion.

For this reason, the district court correctly ruled that GM's refusal to recognize Moranski's proposed affinity group did not violate the nondiscrimination provisions of Title VII.

## **II. WITHIN THE BOUNDS OF THE LAW, EMPLOYERS ARE FREE TO DECIDE WHAT, IF ANY, AFFINITY GROUPS WILL BENEFIT THE COMPANY'S EMPLOYEES AND PARTICULAR BUSINESS OBJECTIVES**

### **A. Employee Affinity Groups Can Be Beneficial to Both Employees and Employers**

Affinity or networking groups, also referred to as advocacy groups, focus groups, support groups, or resource groups, typically are formed by employees within a company to address issues of common interest relating to a particular characteristic of diversity, such as race or gender. These employee groups customarily are recognized by the company as "official" groups, sanctioned by the company and eligible to use certain company equipment, space, technology and other resources. Some companies also provide financial support to recognized affinity groups.

Historically, employee affinity or networking groups were formed to address the unique problems group members faced as minorities in a company through a combination of mentoring, self-help activities, and career development. While employee affinity groups still provide these and other benefits to their members, employers have recognized that individuals from diverse backgrounds, as represented by affinity group members, bring valuable differences in perspective and experience to all aspects of corporate decisionmaking. Raymond A. Friedman, *Trends in Corporate Policy Development for Employee Network Groups* (Vanderbilt Univ. 2000). Affinity or networking groups have proven so valuable to employers that nearly 90% of the Fortune 500 companies have or are forming employee affinity or networking groups. Diversity Best Practices, *Chap. 14: Employee Network and Affinity Groups* 1 (2003).<sup>1</sup>

Employers now are finding ways to tap into these groups' resources to provide input on a variety of business initiatives. Group members are able to provide a company with special knowledge about their particular demographic. Their unique perspective provides an invaluable resource, enabling the company to target and customize such key initiatives as marketing campaigns, human resource efforts, and community outreach. Yoji Cole, *Employee-Affinity Groups: In Lean*

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<sup>1</sup> available at [http://www.diversitybestpractices.com/pdf/chap\\_prim14.pdf](http://www.diversitybestpractices.com/pdf/chap_prim14.pdf).



*Times, Smart Companies Use Them as Business Tools*, DiversityInc. Magazine (Jan.-Feb. 2003), at 58.

Affinity or networking groups are beneficial particularly for the recruitment and retention of talented and skilled workers. Society for Human Res. Mgmt., *What Are Employee Networks & Should They Be Part of Our Diversity Initiative?* (May 26, 2005)<sup>2</sup>. Prospective and current employees are attracted to companies with affinity groups that will enable them to feel more connected to the company and the community, and provide them with direct access to business leaders and mentors who will help them move up in the company. Harry Wessel, *Networking Groups Make Employees, Customers Happy*, Knight Ridder Newspapers (Feb. 20, 2005).

Not all companies choose to have affinity groups nor do those companies that do recognize affinity groups have the same number or types of groups as other companies, however. For instance, a company with a very diverse workforce may find it beneficial to have a hundred or more diversity groups covering various constituencies. Yet, a company with a fairly limited number of constituencies may have only a few affinity groups.

Employers determine which groups, if any, will be beneficial to the employees and company depending upon their own unique work culture and ethic.

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<sup>2</sup> available at <http://www.shrm.org/diversity/empnetworks1.asp>.

Ray Friedman, *The Case of the Religious Network Group*, Harvard Bus. Rev. (July–Aug. 1999). As Friedman points out, employers must take into account varying and sometimes conflicting considerations in placing parameters around the types of groups that can be formed. Many concerns flow from the legitimate need to minimize the potential for workplace harassment and discrimination that could be generated by company-supported groups taking controversial positions (such as those rooted in religious beliefs or non-beliefs). There are sound reality-based reasons not to read Title VII to require the formation of groups that may themselves create violations of Title VII.

**B. Without Appropriate Safeguards, However, Certain Affinity Groups May Provoke Divisiveness and Harassment in the Workplace**

In order to ensure that the groups will be advantageous to both the employee and employer, companies usually establish policies and criteria, whether formal or informal, that groups wanting official recognition as a company-supported affinity or networking group must meet.

Company policies usually address the types of groups that are permitted to form, and those that are not. Typically, such policies will require each group to have a mission or objectives that are business-related and in furtherance of the company's strategic goals. In keeping with the business-oriented purpose of affinity groups, companies frequently also require a group to be sponsored by a

senior manager or corporate leader. A company's affinity group policy characteristically will include procedures for formation and operation of the group, the level of support the company will provide to the group, and group activities that are allowed and prohibited. Raymond A. Friedman, *Trends in Corporate Policy Development for Employee Network Groups* (Vanderbilt Univ. 2000).

There are a number of requirements associated with the governance of affinity groups that are common to most company policies. First, group members must fall into a particular "protected classification," as the term is defined by law or company policy, or be a group of people who have been "historically excluded from the corporate mainstream." Second, the group must abide by the company's antidiscrimination and harassment policies. Additionally, membership in the group may not be exclusive, *i.e.*, a nonminority must be allowed to join an African American network group if he or she so chooses. Also, a group may not be formed for the purpose of causing division among employees or in opposition to other groups.

Importantly, it is relatively common for companies to prohibit certain types of groups such as religious, political or social groups, whose purposes may be inconsistent with the employer's reasons for allowing affinity groups. As noted by GM in its policy, religious, political, and social groups are more likely to form for

the purpose of promoting or advocating their own positions or beliefs, not the company's strategic goals.

Employers are understandably fearful of supporting an “official” forum for employees to promote their beliefs or non-beliefs regarding religion, in particular. A tenet of certain religions is to “spread the word” and convert others to be followers of those religions. Not only does this practice run counter to the overall business-related purposes of employee affinity groups, but this spreading of religious ideology, or views supporting or opposing particular religions or religions in general, could be disruptive to business operations. Indeed, with the mantle of company sponsorship, activities centered on religious views are even more likely to be perceived by other employees as divisive and harassing, creating a hostile work environment for those workers who do not share the same beliefs (and hence a potential Title VII violation). Fay Fiore, *Faithful Are Carving Niche in the Workplace*, L.A. Times (May 15, 2005).

Even if the members of a religious affinity group do not engage in some form of proselytizing, some employees may perceive subtle messages or pressure resulting from the existence of a company-recognized religious affinity group. For many individuals, their religion is a private matter and not part of their workplace. The existence of a group based on religion could result in unspoken or perceived pressure on other employees to join the group. Membership in the group may be

seen as a standard of measurement for succeeding in the company, especially if a senior level manager is involved with the group.

Even more problematically, a few religious groups have sought affinity group status for the purpose of opposing another recognized group, such as when an employer acknowledges a gay and lesbian affinity group, whose lifestyle conflicts with the religious group's beliefs. Julie Foster, *Testing the Faith*, World Net Daily (May 4, 2000)<sup>3</sup> (employees sought official recognition of Christian group as a company networking group in response to employer's recognition of a Gay/Lesbian/Bisexual/Transgender Networking Group).<sup>4</sup> Groups forming in opposition to a group formed by employees in a particular minority population violate one of the primary bases upon which companies establish affinity groups – that of promoting diversity and inclusiveness, and eliminating bigotry.

Not surprisingly then, many private employers have elected for good and sound business reasons, including reasons fully in accord with federal, state, and local nondiscrimination laws, to avoid becoming officially enmeshed in views concerning religion.

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<sup>3</sup> available at <http://lists.ucla.edu/pipermail/religionlaw/2000-May/000733.html>.

<sup>4</sup> *Christians in the Workplace Networking Group v. Sandia Nat'l Labs.*, No. 00-cv-616-SC (D.N.M., May 1, 2000) (complaint filed, but no resolution on merits).

**C. It Is Well-Settled Law That Courts Will Not Second-Guess Employers' Legitimate, Nondiscriminatory Business Judgments**

As well-defined affinity groups can be beneficial to both employees and employers, employers should be free to make the legitimate nondiscriminatory business decision as to which affinity groups they will recognize and which they will not. It is well-settled law that courts will not act as “super personnel departments” by second-guessing an employer’s legitimate business decisions. As long as the decision does not result in a discriminatory employment practice, the courts have permitted companies to use their own judgment as to what is right or wrong for a particular company’s operations. *See e.g., Wells v. Unisource Worldwide Inc.*, 289 F.3d 1001 (7th Cir. 2002) (holding plaintiff had failed to establish that employer’s proffered non-discriminatory reasons for transferring the positions were pretextual); *Traylor v. Brown*, 295 F.3d 783 (7th Cir. 2002) (holding that plaintiff had failed to rebut IDOT’s legitimate reasons for denying her requests to perform the duties).

While affinity groups based on religious beliefs or non-beliefs may be appropriate for a particular work environment, they may not be appropriate for another. Employers are free to make this decision for themselves based on their own company cultures and business objectives.

### **III. REQUIRING EMPLOYERS THAT RECOGNIZE AFFINITY GROUPS ALSO TO SANCTION RELIGIOUS AFFINITY GROUPS BASED ON RELIGIOUS BELIEFS OR NON-BELIEFS WILL HAVE A CHILLING EFFECT ON THE FORMATION OF ALL EMPLOYEE AFFINITY GROUPS**

As noted above, some employers fear that sanctioning affinity groups formed to advocate or advance religion-based positions may create divisive workplace issues, such as claims of harassment by employees not associated with the religious affinity group. For that reason, if this Court were to conclude that choosing not to recognize or sponsor such affinity groups violates Title VII, employers may decide to forego the beneficial aspects of affinity groups entirely and discontinue the practice.

If employers are forced to recognize groups formed to advocate religious beliefs or non-beliefs, an employer may need to monitor the group's practices and activities to ensure that the group did not proselytize or oppose other employees. In any event, allowing these activities could undermine working relationships between employees, disrupt the employer's business operations, and potentially rise to the level of harassment of other employees, possibly resulting in claims against the company for hostile work environment harassment or other forms of unlawful discrimination. Fay Fiore, *Faithful Are Carving Niche in the Workplace*, L.A. Times (May 15, 2005). The resources involved in monitoring a group's

activities, combined with the risk of litigation, could result in employers choosing to forego the benefits of all affinity groups, and disallow them completely.

Additionally, if an employer sponsors one religious affinity group, it then would be required to sanction any group purporting to be a religion that otherwise meets its company policy, or be in violation of Title VII. This could result in a company being required to sanction religious groups based on Satanism, white supremacy, body modification (*see Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126 (1st Cir. 2004) (employee sought accommodation of her purported religious-based belief in wearing body-piercings), *petition for cert. filed*, 73 U.S.L.W. 1345 (U.S. Apr. 15, 2005) (No. 04-9716)), and witchcraft, which could be detrimental to the company's operations, objectives, and image. Ray Friedman, *The Case of the Religious Network Group*, Harvard Bus. Rev. (July–Aug. 1999). Rather than take the risk, an employer justifiably may choose to prohibit all affinity groups.



## CONCLUSION

For all of the foregoing reasons, the Equal Employment Advisory Council and The Chamber of Commerce of the United States respectfully urge the Court to affirm the district court's order.

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## CERTIFICATE OF SERVICE

This is to certify that two true and correct copies of the Brief of the Equal Employment Advisory Council as *Amicus Curiae* in Support of Defendant-Appellee and in Support of Affirmance were served today on counsel of record for each of the parties together with one copy on computer disk via Federal Express overnight delivery, addressed as follows:

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In addition, the original and fifteen (15) copies of the foregoing were sent via Federal Express overnight delivery to the Clerk of this Court, addressed as follows:

Gino J. Agnello, Clerk  
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for the Seventh Circuit  
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Pursuant to Loc. Rule 31(e), I have uploaded a digital version of the brief in .pdf format onto the Court's website.

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Ann Elizabeth Reesman