Nos. 17-1618, 17-1623, 18-107

IN THE

Supreme Court of the United States

GERALD LYNN BOSTOCK, *Petitioner*,
v.
CLAYTON COUNTY, GEORGIA, *Respondent*.

ALTITUDE EXPRESS, INC., AND RAY MAYNARD, *Petitioners*,
v.
MELISSA ZARDA AND WILLIAM MOORE, JR.,
CO-INDEPENDENT EXECUTORS OF THE ESTATE OF
DONALD ZARDA, *Respondents*.

R.G. & G.R. HARRIS FUNERAL HOMES, INC., *Petitioner*,
v.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND
AIMEE STEPHENS, *Respondents*.

On Writs of Certiorari to the United States Courts of Appeals for the Eleventh, Second, and Sixth Circuits

BRIEF OF THE NATIONAL WOMEN'S LAW CENTER AND OTHER WOMEN'S RIGHTS GROUPS AS *AMICI CURIAE* IN SUPPORT OF THE EMPLOYEES

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INTEREST OF *AMICI CURIAE*[1]

The National Women's Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights, and the rights of all people to be free from sex discrimination. Since 1972, NWLC has worked to secure equal employment opportunities, and to ensure that civil rights laws are interpreted correctly to include important protections against sex discrimination. As counsel or *amicus curiae* in numerous cases before this Court and the federal courts of appeals, including in cases addressing federal protections for lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals, NWLC has advocated for the equal treatment of women and girls and challenged sex discrimination. This brief is also submitted on behalf of 36 additional women's rights organizations listed in the attached Appendix that work to address and prevent sex discrimination, and to protect the advancement and equal rights of women and girls. As women's rights advocates, *amici* are fully committed to supporting the rights of all women, including LGBTQ individuals. Given that discrimination tied to sexual orientation or gender identity is part of sex discrimination, as explained herein, advocating for the rights of the employees in these cases is part and parcel of our mission to secure equality and fairness in the workplace and other contexts.

Amici have a particular interest in these matters because the arguments advanced by the employers, if

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[1] No counsel for a party or person other than *amici* and their counsel authored any part of this brief, or contributed money intended to fund its preparation or submission. All parties have consented to the filing of this brief.

accepted, would roll back protections against discrimination based on sex stereotyping that has long been understood by federal courts, the Equal Employment Opportunity Commission (EEOC), employers, and employees in many parts of the nation as impermissible workplace discrimination "because of . . . sex." As detailed herein, any decision by this Court denying the employees workplace protections would be contrary to decades of precedent, decrease protections for LGBTQ individuals, and threaten protections against sex discrimination for all workers.

SUMMARY OF ARGUMENT

"In passing Title VII, Congress made the simple but momentous announcement that sex . . . [is] not relevant to the selection, evaluation, or compensation of employees." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 239 (1989). In the more than half century since Title VII's enactment, the courts and the EEOC have recognized that Title VII "'evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.'" *City of L.A. Dep't of Water & Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978); *see also Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998) (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986)). This includes sex discrimination that may be connected to sexual orientation or an individual being transgender. Any decision to the contrary would upend decades of precedent that has recognized sex stereotyping as a form of sex discrimination barred by Title VII, and would roll back well-established protections for all employees who fail to conform to sex stereotypes, not only LGBTQ applicants and employees.

Each case before this Court involves an employee who was fired for not conforming to sex stereotypes: Gerald Bostock and Donald Zarda were fired because, by being gay, they did not adhere to the expectation that male employees are romantically attracted to women alone or have women partners, while Aimee Stephens, a transgender woman, was fired after informing her employer that she intended to live openly as a woman thereby not conforming with her employer's beliefs about how women and men should appear at work. The former employers maintain that Title VII only applies to being male or female, as assigned at birth, thus excluding sex discrimination when it is tied to sexual orientation or gender identity. However, this limitation both contradicts the text of Title VII and is devoid of other legal support. There is also no practical way for such a limitation on the boundaries of discrimination tied to sex stereotyping to be either implemented in the workplace or enforced by the courts.

Since the earliest cases interpreting Title VII, discrimination "because of . . . sex" has always been understood as barring discrimination based on employers' expectations about how employees of a particular sex will or should behave due to their sex—that is, discrimination based on sex stereotyping. And courts have long recognized that sex stereotyping can take many forms, involving not only beliefs about how women or men should speak, dress, act, and behave at work, but also about their personal and family lives. Indeed, the agency tasked with enforcing federal employment laws regarding preventing and addressing discrimination, the EEOC, has also made clear that protections against sex stereotyping includes protections for LGBTQ employees. *See* Pt. I.B–D, *infra*.

Workplace discrimination based on sex stereotyping—which this Court has held to be impermissible from the beginning of its sex discrimination case law—thus encompasses mistreatment connected to sexual orientation or gender identity. A plaintiff cannot be targeted in relation to her sexual orientation or gender identity without being discriminated against for departing from expectations about the "proper" roles of men and women. Specifically, it is a sex stereotype that women should be married and romantically attracted only to men, and vice versa. So, too, is the expectation that employees will always live as the sex assigned to them upon birth. Accordingly, employees who face adverse employment actions for not abiding by these expectations are discriminated against for not complying with sex stereotypes.

Title VII bars sex discrimination tied to sexual orientation or gender identity even if this is "assuredly not the principal evil Congress was concerned with when it enacted Title VII." *Oncale*, 523 U.S. at 79. "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils." *Id.* Thus, as this Court has held, our ultimate concern must be with "the provisions of our laws rather than the principal concerns of our legislators." *Id*.[2]

No principled reason justifies limiting Title VII so as to prohibit some, but not all, forms of sex stereotyping. Doing so would make Title VII impossible to navigate for courts, employers, and employees, who would have to guess at whether a particular behavior or conduct

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[2] Notably, in its unanimous 1998 decision, *Oncale*, this Court recognized that the broad reach of Title VII's protections against sex discrimination includes protections against same-sex sexual harassment. 523 U.S. at 79-81.

related to a sex stereotype is not related to sexual orientation or gender identity—and thus, prohibited by federal law—or, whether it was tied to sexual orientation or gender identity and then deemed outside the scope of sex discrimination barred by Title VII.

All employees should be free to work and earn a living without having to face discrimination that is tied to sex stereotyping. Allowing employers to engage in sex discrimination tied to sexual orientation or gender identity particularly harms those workers who don't conform to sex stereotypes —not only those who are part of the LGBTQ community. *See* Pt. II.B, *infra*. No limitation based on sexual orientation or gender identity should be imported into Title VII's protections against discrimination based on sex stereotyping. Instead, *amici* urge the Court to affirm Title VII's "broad rule of workplace equality." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993).

ARGUMENT

I. Since its enactment, courts have recognized that Title VII prohibits as discrimination "because of . . . sex" adverse employment actions driven by assumptions about how members of a sex will or should act.

For over fifty years, Title VII has been understood as providing broad protections against sex discrimination based on stereotyped expectations about the proper role or behavior of men and women. Over the past decade, the EEOC, other federal agencies, five circuits—two of which were sitting *en banc*—and dozens of district courts have concluded that Title VII's prohibitions encompass sex discrimination

connected to sexual orientation or gender identity.[3] This result follows from the logic of the earliest jurisprudence on sex discrimination under Title VII, which struck down adverse employment actions taken against employees based on their failure to conform to their employer's sex-based assumptions and expectations.

A. On its face, Title VII supports an expansive definition of sex discrimination that includes adverse employment actions based on sex stereotyping.

"Title VII is a broad remedial measure, designed to assure equality of employment opportunities." *Pullman-Standard v. Swint*, 456 U.S. 273, 276 (1982) (internal quotation marks omitted). The statute expressly prohibits discrimination "because of [an] individual's . . . sex," which means that "gender must be irrelevant to employment decisions." *Price Waterhouse*, 490 U.S. at 240. As this Court has explained, "Congress' intent to forbid employers to take gender into account in making employment decisions appears on the face of the statute." *Id*. at 239. The employers' restrictive reading of Title VII both contradicts the statute's plain

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[3] *See, e.g.*, *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 131–32 (2d Cir. 2018) (*en banc*), *cert granted sub nom. Altitude Express, Inc. v. Zarda*, 139 S. Ct. 1599 (2019); *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 399, 341 (7th Cir. 2017) (*en banc*). The undersigned *amici* join in the *amici* brief to be filed by Former Chairs and Commissioners of the Equal Opportunity Commission, Secretaries of Education, Deputy Attorney General, and Other Officials from the EEOC, Department of Justice, Department of Labor, Department of Education, and Department of Health and Human Services, detailing how EEOC and components of the federal government have recognized that discrimination on the basis of sex encompasses discrimination tied to sexual orientation or individuals who are transgender, in line with the growing body of federal case law.

language and constitutes an unworkable interpretation that would turn Title VII jurisprudence on its head.

The text of Title VII does not limit the definition of "sex." 42 U.S.C. § 2000e–2. It should not be read to import any artificial limitations. *Cf., e.g.*, *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41 (1997) (declining to restrict the meaning of the term "employees" in Title VII to mean only "current employees").[4] "Sex" was also widely understood in 1964 as encompassing much more than being a man or a woman. The unabridged 1961 edition of Webster's dictionary, "the most-cited dictionary in [this Court's] opinions," defined "sex" to include: (1) biology, as "'[o]ne of the two divisions of organisms formed on the distinction of male and female'"; (2) social roles, as "'[t]he sphere of behavior dominated by the relations between male and female'"; and (3) sexuality, as "'the whole sphere of behavior related even indirectly to the sexual functions and embracing all affectionate and pleasure-seeking conduct.'" William N. Eskridge, Jr., *Title VII's Statutory History and the Sex Discrimination Argument for LGBT Workplace Protections*, 127 Yale L. Rev. 322, 338 (2017) (quoting Webster's New International Dictionary of the English Language 2296 (2d unabridged ed. 1961); *accord* Webster's Third New International Dictionary (1963); Webster's Seventh New Collegiate Dictionary (1963)).

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[4] It is also well-established that employers cannot discriminate among employees based on the reproductive capacity between the sexes. *See, e.g.*, *Int'l Union, United Auto, Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187 (1991) (holding that policy restricting fertile women, but not fertile men, from working in certain factory floor jobs violated Title VII).

The legislative history, "notable primarily for its brevity," *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 143 (1976),[5] likewise provides no justification for a categorical rule limiting sex discrimination to discrimination based solely on being a man or a woman. Instead, it indicates that Congress anticipated that the statute would encompass discrimination based on assumptions about how members of a sex should act. Legislators, both for and against adding 'sex' to Title VII, focused on the social meaning of sex discrimination, and their disagreement hinged primarily on the question of whether employers should be permitted to engage in practices that reflected and reinforced conventional understandings of men's and women's roles. *See* Cary Franklin, *Inventing the "Traditional Concept" of Sex Discrimination*, 125 Harv. L. Rev. 1307 (2012); *see, e.g.*, 110 Cong. Rec. 2548, 2580 (1964) (statement of Rep. Griffiths) (expressing the concern that before Title VII, "protective legislation" purported to "safeguard the health of women," but "has really been to protect men's rights in better paying jobs"); *id.* at 2580–81 (statement of Rep. St. George) (supporting Title VII on the ground that without it, women could not "run an elevator late at night" or "serve in restaurants and cabarets late at night," and were treated like "chattels" because they "were never expected to be or believed to be equal intellectually"); *id.* at 2577 (statement of Rep. Celler) (opposing Title VII on the ground that it would result in "upheaval" to "traditional family relationships").

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[5] Unlike Title VII's prohibition on race discrimination, the corresponding prohibition on sex discrimination was added to the bill with little floor debate and without the benefit of congressional hearings. 110 Cong. Rec. 2548, 2577–84 (1964).

Accordingly, months after the statute's enactment, the EEOC issued Guidelines on Discrimination Based on Sex providing that employers violate Title VII by "refus[ing] to hire an individual based on stereotyped characterizations of the sexes." 29 C.F.R. § 1604.1(a)(ii)(1965); 30 Fed. Reg. 14926, 14927 (Dec. 2, 1965).

Justice Thurgood Marshall recognized that this principle is enshrined in the legislative history in his concurring opinion in *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971), the first Title VII sex discrimination case before this Court. He concluded that "characterizations of the proper domestic roles of the sexes were not to serve as predicates for restricting employment opportunity." *Id.* at 545 (Marshall, J. concurring); *see also id.* at 545 n. 2 (citing remarks of congressional Representative Ross Bass from Tennessee, 110 Cong. Rec. 2548, 2578 (1964), who expressed concerns about workplace sex discrimination against married women). Drawing from the 1965 EEOC Guidelines, Justice Marshall recognized that Title VII aimed to prohibit job decisions based on "stereotyped characterizations of the sexes." *Phillips*, 400 U.S. at 544–45 (internal quotation marks omitted).

In short, from its enactment, Title VII has prohibited as discrimination "because of . . . sex" adverse employment actions driven by discrimination for not conforming to sex stereotypes. This follows both the text of Title VII, which broadly prohibits sex discrimination, and the legislative history, which demonstrates Congress's intent that Title VII encompass protections against such sex discrimination.

B. Early Title VII cases recognized that discrimination based on sex stereotyping falls within Title VII's ambit.

As this Court explained in *Manhart*, "[b]efore the Civil Rights Act of 1964 was enacted, an employer could fashion his personnel policies on the basis of assumptions about the differences between men and women, whether or not the assumptions were valid." 435 U.S. at 707. Soon after Title VII's enactment, however, it became "well recognized that employment decisions cannot be predicated on mere 'stereotyped' impressions about the characteristics of males or females." *Id.* "'In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.'" *Id.* at 707 n.13 (quoting *Sprogis v. United Air Lines, Inc.*, 444 F.2d 1194, 1198 (7th Cir. 1971)).

In the first years after the enactment of Title VII, courts struck down categorical rules that barred women or men from sectors of the workplace based on their sex as discrimination "because of . . . sex." *See, e.g., Weeks v. S. Bell Tel. & Tel. Co.*, 408 F.2d 228, 235–36 (5th Cir. 1969) (holding that policy barring women from working as switchmen because the job required heavy lifting violated Title VII); *Diaz v. Pan Am. World Airways, Inc.* 442 F.2d 385, 388–39 (5th Cir. 1971) (invalidating women-only rule for flight attendants); *Sprogis*, 444 F.2d at 1197–1202 (invalidating airline policy of employing only unmarried female flight attendants); *Allen v. Lovejoy*, 553 F.2d 522, 524–25 (6th Cir. 1977) (invalidating State Health Department rule requiring newly married female employees to take on their husbands' last names); *see generally, Am. Newspaper Publishers Ass'n v.*

Alexander, 294 F. Supp. 1100, 1102–03 (D.D.C. 1968) (invalidating "help wanted" advertisements bifurcated into male and female sections).

These early cases striking down flat prohibitions of one sex from particular occupations understood Title VII as barring adverse employment actions driven by stereotypes about what types of jobs were physically, emotionally, and temperamentally appropriate for individuals due to their sex—in other words, discrimination based upon traditional sex stereotypes. *See, e.g.*, *Diaz*, 442 F.2d at 389 (refusing to consider "the public's expectation of finding one sex" in the role of a flight attendant); *Weeks*, 408 F.2d at 235–36 (finding that prohibition against female switchmen was based on a "stereotyped characterization" of women).

From the start, courts also understood that discrimination need not categorically target all members of one sex in a workplace to violate Title VII. Instead, as this Court recognized in the first Title VII sex discrimination case before it, the statute prohibits employment discrimination that affects some, but not all, women, such as an employer's decision to hire women without children, but not mothers of preschool-aged children, despite accepting applications from fathers of pre-school aged children. *Phillips*, 400 U.S. at 544. *Phillips* struck down a policy that reflected the assumption that mothers of young children could or should not work. This Court held that there was "no question" that this policy evinced "bias against women." *Id.* at 543.

Therefore, from the beginning, courts shared a commonly understood definition of "sex" that broadly included not whether one was a man or a woman, but rather the assumptions and stereotypes about how

members of a sex—or of a subset of a sex—should behave.

C. In 1989, *Price Waterhouse* expressly recognized workplace discrimination based on an employee's failure to conform to sex stereotypes as a form of Title VII sex discrimination.

As detailed above, the earliest jurisprudence reflected an understanding that Title VII covers employment discrimination against women or men based on their failure to conform to sex stereotypes about how they should behave and what jobs were appropriate for them. In 1989, this Court more formally recognized this same principle in *Price Waterhouse*. The plaintiff in that case, Ann Hopkins, had played a key role in winning a multi-million dollar contract—a feat unmatched by any of the 87 male candidates for promotion. 490 U.S. at 237. Accounting firm Price Waterhouse nonetheless denied her partnership because she did not fit its "impermissibly cabined view of the proper behavior of women." *Id*. at 236–37. Hopkins was advised that in order to "improve her chances for partnership" she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." *Id.* at 235 (internal quotation marks omitted). The Court held that Price Waterhouse had violated Title VII, explaining that "we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group." *Id.* at 251.

In reaching that conclusion, this Court clarified that, even in 1989, it was "tread[ing] [a] well-worn path," not "travers[ing] new ground." *Id.* at 248, 250. In so holding, this Court reaffirmed that sex

stereotyping is a central harm of sex discrimination, because enforcement of such stereotypes closes opportunity, depriving individuals of their essential liberty to depart from gender-based expectations. *See, e.g.*, *Frontiero v. Richardson*, 411 U.S. 677, 685 (1973) (Equal Protection case striking down sex classification based on assumptions about women's appropriate role in the family, decrying discrimination based on "gross, stereotyped distinctions between the sexes"); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 653 (1975) (holding that gender-based classification in the Social Security Act that provided dissimilar treatment to similarly situated men and women based on a "gender-based generalization" was unconstitutional); *Califano v. Goldfarb*, 430 U.S. 199, 216-17 (1977) (holding that the differential treatment of widows and widowers based on "archaic and overbroad generalizations" was unconstitutional). Indeed, a finding to the contrary in *Price Waterhouse* would have contradicted decades of jurisprudence and EEOC guidance, rejecting courts' repeated recognition that limiting opportunities based on sex stereotypes is among the core harms of sex discrimination. *See* Pt. I.B, *infra*.

D. Following *Price Waterhouse*, Congress and the courts have reaffirmed the ways that Title VII protects against employment actions driven by myriad sex stereotypes.

1. Congress reaffirmed and expanded protections against sex discrimination in the 1991 Amendments to Title VII.

Two years after *Price Waterhouse*, the 1991 amendments to Title VII affirmed the Court's recognition of sex stereotyping as a form of sex discrimination two years before. Rather than taking this opportunity to

limit Title VII's broad proscription on discrimination "because of . . . sex," Congress *expanded* Title VII's reach to sweep in "[e]ven employment decisions motivated only in part by a disapproved criterion" such as sex. Eskridge, *Title VII's Statutory History*, 127 Yale L. Rev. at 332; *see also* Civil Rights Act, Pub. L. No. 102–166 § 107(a) (Nov. 1991) (adding 42 U.S.C. § 2000e-2(m)), which provides that "an unlawful employment practice is established when the complaining party demonstrates that . . . sex . . . was a motivating factor for any employment practice, even though other factors also motivated the practice"). The 1991 amendments to Title VII thus reaffirmed the statute's broad prohibition of sex discrimination including adverse employment actions based on assumptions about the appropriate role of the sexes in the workplace.[6]

2. For decades, courts have recognized that Title VII prohibits discrimination based on sex stereotypes relating to perceived personal, familial, or romantic relationships.

Title VII bars adverse employment actions based on sex stereotypes even when they are not tied directly to an employee's appearance or behavior at work. Courts have recognized, for example, that Title VII prohibits discrimination based on sex stereotypes related to an

[6] The undersigned *amici* join in the arguments set out in the briefs to be filed by women CEOs and other C-Suite Executives, and by the Service Employees International Union, *et al*., as *amici curiae* in support of the employees, explaining Title VII jurisprudence addressing discrimination against women employees based on sex stereotyping, highlighting social science research regarding how such sex stereotyping continues to pose a barrier to women's advancement and success in the workplace, and providing real-life examples of sex discrimination faced by women who work in traditionally male-dominated fields.

employee's personal and family life. In these cases, the employer has generally attempted to justify its adverse employment decision by contending that the employee's familial responsibilities—for example, young children or a new spouse—threaten to adversely impact job performance. However, courts have repeatedly rejected this line of arguments, following this Court's precedent in the early Title VII sex discrimination cases. *See, e.g.*, *Phillips*, 400 U.S. at 544 (invalidating policy of not hiring mothers of preschool-aged children).

Sheehan v. Donlen Corp., 173 F.3d 1039 (7th Cir. 1999), is illustrative. In *Sheehan*, the Seventh Circuit held that a supervisor telling an employee "that she was being fired so that she could 'spend more time at home with her children'" was direct evidence of sex-based discrimination. *Id.* at 1045. *Sheehan* acknowledged that the statement "invoked widely understood stereotypes the meaning of which is hard to mistake." *Id.* Similarly, other cases have held that employers engaged in impermissible sex stereotyping by taking adverse employment actions against employees based on the belief that plaintiffs with children would be unable to devote the necessary time and effort to their careers. *See, e.g.*, *Chadwick v. WellPoint*, 561 F.3d 38, 47 (1st Cir. 2009) (holding that a reasonable jury could infer that an employee was denied a promotion because her employer "assumed that as a *woman* with four young children, [she] would not give her all to her job"); *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 120 (2d Cir. 2004) (impermissible sex stereotyping where employer fired school psychologist based on beliefs that "a woman cannot 'be a good mother' and have a job that requires long hours," and "would not show the same level of commitment [she] had shown because [she now] had little ones at home"); *Lust v. Sealy, Inc.,* 383 F.3d 580,

583 (7th Cir. 2004) (same where employer admitted that he didn't promote the plaintiff "because she had children and he didn't think she'd want to relocate her family, though she hadn't told him that," and he had inquired as to "why [the employee's husband] wasn't going to take care of her"); *Santiago-Ramos v. Centennial P.R. Wireless Corp.,* 217 F.3d 46, 57 (1st Cir. 2000) (same where direct supervisor questioned "whether [the plaintiff] would be able to manage her work and family responsibilities").

Title VII also protects against adverse employment decisions based on perceptions about an employee's sexual relationships. In *Parker v. Reema Consulting Services, Inc.*, 915 F.3d 297 (4th Cir. 2019), the Fourth Circuit held that a female employee was discriminated against when she was fired based on "an unfounded, sexually-explicit rumor about her" that "falsely and maliciously portrayed her as having [had] a sexual relationship" with a higher-ranking manager . . . in order to obtain her management position." *Id.* at 300. Limiting Title VII's reach with respect to sexual orientation or gender identity related discrimination cannot be reconciled with these holdings that workplace discrimination based on sex stereotypes relating to personal or family life or perceived romantic or familial relationships violates Title VII.

II. No principled distinction can be drawn between sex discrimination relating to sexual orientation or gender identity, and any other types of discrimination based on sex stereotypes.

A. Discrimination tied to sexual orientation or gender identity necessarily constitutes discrimination because of sex.

As a growing number of federal courts have recognized, discrimination tied to sexual orientation or gender identity falls squarely within Title VII's well-established prohibition on workplace discrimination based on sex stereotyping. As even the earliest Title VII sex discrimination cases understood, Title VII not only bars discrimination based on categorical prohibitions of members of one sex in the workplace, "but also discrimination based on the fact that [the employee in question] failed 'to act like a woman'—that is, to conform to socially-constructed gender expectations." *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000) (citing *Price Waterhouse*, 490 U.S. at 240). And this principle "applies with equal force to a man who is discriminated against for acting too feminine." *Nichols v. Azteca Rest. Enters., Inc.,* 256 F.3d 864, 874 (9th Cir. 2001). Put another way, sex discrimination prohibited by Title VII has been consistently recognized as encompassing "the cultural and social aspects associated with masculinity and femininity." *Macy v. Holder*, EEOC Doc. 0120120821, 2012 WL 1435995, at *6 (Apr. 20, 2012); *cf. Nichols,* 256 F.3d at 874 ("*Price Waterhouse* applies with equal force to a man who is discriminated against for acting too feminine" in affirming that Title VII precludes harassment based on sex stereotypes).

Because sexual orientation and gender identity are both a function of sex, as detailed further below, discrimination connected to either is a subset of sex discrimination based on non-conformity with stereotypes about the proper roles of men and women. It is analytically impossible to fire an employee based on that employee's sexual orientation or status as a transgender person without being motivated by the employee's sex. Courts have recognized this not only in the context of Title VII and the workplace, but also in other contexts, such as access to credit and education, where courts employ an analogous sex stereotyping framework.[7] There is no principled basis for treating

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[7] *See, e.g.*, *United States v. Virginia*, 518 U.S. 515, 550 (1996) (holding that the Virginia Military Institute's ban on women based on generalizations about women's suitability for militaristic education violated Equal Protection Clause); *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75 (1992) (interpreting sex discrimination under Title IX in accordance with earlier Title VII decision); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047–54 (7th Cir. 2017), *cert. dismissed sub nom. Kenesha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker ex rel. Whitaker*, 138 S. Ct. 1260 (2018) (applying similar analysis to sex discrimination claims arising under Title VII, Title IX, and the Equal Protection Clause); *Glenn v. Brumby*, 663 F.3d 1312, 1316-17 (11th Cir. 2011) (finding Equal Protection Clause violation where transgender individual was discriminated against for failure to conform to sex stereotypes); *Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213, 214 (1st Cir. 2000) (finding valid sex discrimination claim under Equal Credit Opportunity Act for a plaintiff assigned male at birth who was denied a loan application because he was "dressed in traditionally feminine attire"); *S.E.S. v. Galena Unified Sch. Dist. No. 499*, 18-2042-DDC-GEB, 2018 WL 3389880, at *3–4 (D. Kan. July 12, 2018) (finding plaintiff stated viable Title IX sex discrimination claims where harassers called plaintiff derogatory names used to target individuals who are gay); *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cty., Fla.*, 318 F. Supp. 3d 1293, 1325 (M.D. Fla. 2018)

discrimination tied to sexual orientation or gender identity different from any other type of discrimination based on sex.

As the Second Circuit sitting *en banc* in *Zarda v. Altitude Express, Inc.*, reasoned, "sexual orientation is doubly delineated by sex because it is a function of both a person's sex and the sex of those to whom he or she is attracted." 883 F.3d 100, 113 (2d Cir. 2018) (*en banc*). It is also "*defined* by one's sex in relation to the sex of those to whom one is attracted, making it impossible for an employer to discriminate on the basis of sexual orientation without taking sex into account." *Id.* at 131 (emphasis in original).

Accordingly, discrimination tied to sexual orientation is rooted in an individual's "failure to conform to the [male or] female stereotype . . . which views heterosexuality as the norm." *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339, 346 (7th Cir. 2017) (*en banc*); *see also Baldwin v. Foxx*, EEOC Doc. 0120133080, 2015 WL 4397641, at *8 (July 15, 2015) (recognizing that sexual orientation discrimination most commonly involves "heterosexually defined gender norms"). Such discrimination or harassment is unlawful because it is "motivated by the sexual stereotype that marrying [or being attracted to] a woman is an essential part of being a man," and vice versa. *Veretto v. Donahoe*, EEOC Doc. 0120110873, 2011 WL 2663401, at *3 (July 1, 2011). As the Second Circuit recognized in *Zarda*, "[t]he gender stereotype at work . . . is that 'real' men

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(finding Title IX violation where transgender student was discriminated against based on sex).

should date women, and not other men." 883 F.3d at 121 (internal quotation marks omitted).[8]

Moreover, "[n]othing in Title VII suggests that Congress intended to confine the benefits of that statute to heterosexual employees alone." *Heller v. Columbia Edgewater Country Club*, 195 F. Supp. 2d 1212, 1222 (D. Or. 2002). The Court should decline to import into Title VII a limitation on sex discrimination that would prohibit sex stereotyping insofar as it is applied to heterosexual employees, but permit it as to other employees. *Cf., e.g.*, *Robinson*, 519 U.S. at 340–41 (declining to restrict Title VII's term "employees" to only "current employees").

The same is true of discrimination against an employee who are transgender. This too is a form of sex discrimination. Transgender people transgress the expectation that one identify with and adopt the social roles and behaviors of one's sex assigned at birth. As the Sixth Circuit below acknowledged in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018), "transgender or transitioning status constitutes an inherently gender non-conform-

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[8] Discrimination based on stereotypes about the sex of an employee's romantic partners also constitutes associational discrimination because of sex—that is, disapproving of an employee's association with persons of a particular sex. *See, e.g.*, *Zarda*, 883 F.3d at 128 ("[S]exual orientation discrimination, which is based on an employer's opposition to association between particular sexes . . . constitutes discrimination 'because of . . . sex.'"); *Baldwin*, 2015 WL 4397641, at *6 ("Sexual orientation discrimination is also sex discrimination because it is associational discrimination on the basis of sex."). Such associational discrimination is comparable to the anti-miscegenation laws struck down in *Loving v. Virginia*, 388 U.S. 1, 12 (1967), which involved discrimination based on association with persons of another race. *See Zarda*, 883 F.3d at 125–28; *Baldwin*, 2015 WL 4397641, at *6.

ing trait." *Id.* at 577. In fact, "a person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes." *Id.* (internal quotation and alteration marks omitted).

Indeed, discrimination against plaintiffs who are transgender—and therefore do not act in accordance with expectations about, and identify with, their sex as assigned at birth—is directly comparable to the discrimination directed against Ann Hopkins in *Price Waterhouse*, who was deemed by the partners at her firm as not acting, in gender stereotypical terms, like a "woman." Like Hopkins, transgender employees are discriminated against at work for acting or appearing "insufficiently masculine" or "insufficiently feminine" enough for an employer. *Schroer v. Billington*, 577 F. Supp. 2d 293, 305 (D.D.C. 2008). "Sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior." *Smith v. City of Salem, Ohio*, 378 F.3d 566, 575 (6th Cir. 2004).

The direct link between being transgender and not conforming to gender stereotypes is apparent in the case before this Court: Aimee Stephens was fired by an employer who, in his words, was "just old-fashioned" and believed that "a male should look like a . . . man" and a woman should look like a woman. Funeral Homes J.A. 72–73. The employer indicated that he terminated Stephens because she was going to live openly as a woman, including by using the name Aimee, using she/her pronouns, and wearing traditionally feminine attire. *Id.* at 131. As her former employer expressly admits, Stephens was fired for not complying with that employer's sex stereotypes.

Amici thus urge the Court to recognize what a majority of the federal courts of appeals and the EEOC

have already understood: that discrimination tied to sexual orientation or an individual being transgender necessarily implicates Title VII's proscriptions against employment discrimination "because of . . . sex." 42 U.S.C. §§ 2000e–2.

B. Rolling back Title VII to exclude claims of sexual orientation or gender identity discrimination would create an unworkable distinction, and undermine existing protections against sex stereotyping.

Carving out discrimination relating to sexual orientation or gender identity from Title VII's protections against sex discrimination would negate the entire history of Title VII's prohibition on sex stereotyping by pronouncing some forms of sex stereotyping impermissible under the law, while permitting others. There is no practical way of drawing such a line either in the law or in the lives of LGBTQ individuals and other employees.

As outlined below, the research demonstrates that gender nonconforming individuals of all sexual orientations and gender identities face sex discrimination. As such, imposing a false division between sex discrimination tied to sexual orientation or gender identity and the sex stereotyping discrimination faced by others would be an unworkable, unfair, and illogical approach to civil rights protections against sex discrimination in the workplace.

Turning first to sexual orientation, studies confirm that in many contexts, "the line between a gender nonconformity claim and one based on sexual orientation . . . does not exist at all." *Hively*, 853 F.3d at 346. Numerous studies have shown that gay men are assumed to be feminine and lesbians are assumed to

be masculine. A.J. Blashill & K.K. Powlishta, *Gay Stereotypes: The Use of Sexual Orientation as a Cue for Gender-Related Attributes*, 61 Sex Roles 783, 783, 789-90 (2009) (replicating results of decades' worth of past studies in drawing same conclusion). The inverse is also true, with individuals who do not conform to sex stereotypes generally presumed to be gay or lesbian. *See id.* at 783, 790 (summarizing research). And research examining sexual orientation and gender non-conformity has found that being gay and violating traditional gender roles frequently (though not always) overlap, *see, e.g.,* Richard A. Lippa, *Sexual Orientation and Personality*, 16 Annual Rev. Sex Research 119, 145 (2005), showing how inextricably intertwined sex discrimination and sexual discrimination are.

The facts underlying the *Ellingsworth v. Hartford Fire Insurance Co.*, 247 F. Supp. 3d 546 (E.D. Pa. 2017) case exemplify how failure to conform to sex stereotypes can be conflated with sexual orientation for purposes of workplace discrimination. The plaintiff alleged that her supervisor had "ridicul[ed] her publicly for 'dressing like a dyke,' and forc[ed] her to peel back her clothing to show her coworkers her 'lesbian tattoo.'" *Id*. at 553. This "clearly convey[ed] that [the plaintiff] did not conform to [her supervisor's] idea of how a woman should look, act, or dress." *Id.* at 554. As the *Ellingsworth* court recognized, the fact that the plaintiff "is not gay simply reveals that [her supervisor] harbored such a strong prejudice and animus as to how women should look, dress, and act, that [the supervisor] actually mischaracterized another person's sexual orientation because of this prejudice." *Id*.

It would be nonsensical, for example, to require courts to determine whether hostility against an employee constitutes unlawful discrimination based

on her failure to conform to sex stereotypes, or was somehow legally permissible behavior justified by a presumption that she was a lesbian. Similarly, it would be logically impossible for a court to attempt to parse whether discrimination against a lesbian employee based on her failure to conform to feminine stereotypes was based on stereotypes related or unrelated to her sexual orientation. *See Zarda*, 883 F.3d at 121–22 (holding that it would be "illogical" to require courts to resort to "lexical bean counting, comparing the relative frequency of epithets . . . to determine whether discrimination is based on sex or sexual orientation").

This principle applies equally to gender identity. An employer simply "cannot discriminate on the basis of transgender status without imposing its stereotypical notions of how sexual organs and gender identity ought to align." *Harris Funeral Homes*, 884 F.3d at 576. Thus, "[t]here is no way to disaggregate discrimination on the basis of [gender identity] from discrimination on the basis of gender non-conformity." *Id*. at 576–77. Attempting to do so would effectively constitute a form of sex stereotyping itself by imposing norms based upon one's sex assigned at birth.

The net effect of categorically excluding any sexual orientation or gender identity discrimination claims from Title VII's reach would be to introduce uncertainty for our nation's federal courts, employers, and employees who would have to guess at which sex stereotypes are deemed to be related to sexual orientation or gender identity, and which are not. Not only would this be unworkable, but it would also undermine Title VII's "broad rule of workplace equality." *Harris v. Forklift*, 510 U.S. at 22. *Price Waterhouse* and other cases addressing sex stereotyping did not make Title VII's protection against sex stereotyping

conditional, or provide any rationale for withholding such protection simply because the individual in question is LGBTQ. To the contrary, federal courts have consistently affirmed that Title VII prohibits *all* discrimination stemming from sex-based stereotypes—precisely what occurred in the three cases now before the Court.

Social science research also demonstrates that all individuals who do not conform to gender norms regarding appearance, traits, or behaviors are viewed more negatively than those who do, regardless of sexual orientation or gender identity. A 2012 study that examined the relationship between sexual orientation and gender nonconformity concluded that gender nonconformity is viewed negatively in and of itself. Aaron J. Blashill & Kimberly K. Powlishta, *Effects of Gender-Related Domain Violations and Sexual Orientation on Perceptions of Male and Female Targets: An Analogue Study*, 41 Archives Sexual Behavior 1293 (2012). Participants in the study were given vignettes describing male and female individuals who were either gay or heterosexual, and who either conformed or did not conform to gender roles. *Id.* at 1296, 1301. The study found that individuals who did not conform to gender norms in their activities—such as a woman who enjoyed fishing, building with tools, and fixing cars—or in their appearance—such as a woman who has a deep voice, broad shoulders, and rough hands—were viewed as less likable. *Id.* at 1299-1301. This remained true regardless of whether they were gay or heterosexual. *Id.*

Other studies have reached the same conclusion. Researchers have found that both heterosexual and gay men who are seen as stereotypically feminine are viewed more negatively than men who act more stereo-

typically masculine, Aaron J. Blashill & Kimberly K. Powlishta, *The Impact of Sexual Orientation and Gender Role on Evaluations of Men*, 10 Psychology Men & Masculinity 160, 160-173 (2009); adolescents are less accepting of their gender-unconventional peers, regardless of sexual orientation, Stacy S. Horn, *Adolescents' Acceptance of Same-Sex Peers Based on Sexual Orientation and Gender Expression*, 36 J. Youth & Adolescence 363, 363–371 (2007); and lesbians and gay men who do not act, dress, speak, and carry themselves as more stereotypical women or men are evaluated more negatively than others who do, Karne Lehavot & Alan J. Lambert, *Toward a Greater Understanding of Antigay Prejudice: On the Role of Sexual Orientation and Gender Role Violation*, 29 Basic & Applied Social Psychology 279, 279-292 (2007).

The same is true for research on gender identity. A study published earlier this year concluded that participants' attitudes are more negative toward all individuals who do not conform to sex stereotypes, as compared to those who do. Kristen A. Broussard & Ruth H. Warner, *Gender Nonconformity Is Perceived Differently for Cisgender and Transgender Targets*, 80 Sex Roles 409, 409-428 (2019). This holds true whether the gender non-conforming individuals are transgender or not. *Id.* at 409, 417, 420, & 424-25. Transgender individuals also face discrimination based on how closely they comport to the sex stereotypes associated with the gender with which they identify. To illustrate, between two transgender individuals who identify as men, one who dresses, acts, speaks, and behaves more like a stereotypical male has been found to experience less discrimination than one who does not. A 2015 study found that "[g]ender nonconforming trans adults reported more events of major and everyday transphobic discrimination than their

gender conforming counterparts. That is, the more frequently trans people are read as transgender or gender nonconforming by others, the more they are subject to major and day-to-day discriminatory treatment." Lisa R. Miller & Eric Anthony Grollman, *The Social Costs of Gender Nonconformity for Transgender Adults: Implications for Discrimination and Health*, 30 Sociological Forum 809, 826 (2015).

As noted above, individuals who do not conform to sex stereotypes are perceived to be gay or lesbian, and vice versa. *See, e.g.*, A.J. Blashill & K.K. Powlishta, *Gay Stereotypes*, 61 Sex Roles at 789-90. Excluding discrimination against LGBTQ individuals from the ambit of Title VII based on their failure to conform to sex stereotypes would create the perverse incentive for employers to couch their adverse employment actions against any gender non-conforming employees—including those who are not LGBTQ—as discrimination based on actual or perceived sexual orientation or gender identity.[9] This would mean, for example, that had the *Price Waterhouse* partners stated that they refused to promote Ann Hopkins because they suspected that she was a lesbian, rather than due to her failure to conform to stereotypes of how a woman should carry herself in the workplace, she would have remained unprotected under an illogically restrictive interpretation of Title VII's protections against sex discrimination. Such a result would sharply undermine Title VII's core

[9] The undersigned *amici* also join in the arguments set out in the brief to be filed by the Lawyers' Committee for Civil Rights under Law, the Leadership Conference on Civil and Human Rights, and other civil rights organizations as *amici curiae* in support of the employees, which details how LGBTQ people of color are particularly at risk for employment discrimination on multiple fronts and in need of all of these workplace protections.

protections against sex discrimination that have been recognized since the start of sex discrimination jurisprudence, including from this Court.[10]

The principle that Title VII encompasses protections against sex discrimination based upon social roles and stereotypes is thus at the core of these three cases. The employers' arguments in these cases threaten the ability of all, not just those who are LGBTQ people, to thrive in the workplace free from discrimination based on sex stereotyping. This Court should reject that invitation and again affirm the "broad rule of workplace equality" that protects all individuals from discrimination "because of . . . sex." *Harris v. Forklift*, 510 U.S. at 21–22.

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[10] As women's rights organizations, we also note that states, cities, school boards, and athletic associations across the country have been explicitly protecting LGBTQ people from discrimination for decades without harming women's spaces, public safety, or privacy. *See* Movement Advancement Project, Human Rights Campaign, *Equality Maps: Non-Discrimination Laws*, http://www.lgbtmap.org/equality-maps/non_discrimination_laws (last accessed June 25, 2019); HUMAN RIGHTS CAMPAIGN FOUND., MUNICIPAL EQUALITY INDEX: A NATIONWIDE EVALUATION OF MUNICIPAL LAW (2018), *available at* https://assets2.hrc.org/files/assets/resources/MEI-2018-FullReport.pdf. Protecting LGBTQ people under the law poses no harm to women who are not transgender, or to anyone else. *See, e.g.*, *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 533-36 (3d Cir. 2018), *reh'g en banc denied*, 897 F.3d 515 (3d Cir. 2018), *cert. denied sub nom. Doe v. Boyertown Area Sch. Dist.*, No. 18-659, 2019 WL 2257330 (U.S. May 28, 2019) (rejecting arguments that school policy protecting transgender students violated other students' rights); *Cruzan v. Special Sch. Dist., No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (holding that school's policy permitting transgender faculty member to use woman's faculty restroom did not create hostile environment under Title VII).

CONCLUSION

For the reasons set forth above, the Court should hold that Title VII's prohibition against employment discrimination "because of . . . sex" encompasses discrimination tied to an individual's sexual orientation or gender identity, the judgments of the United States Courts of Appeals for the Second and Sixth Circuit should be affirmed, and that of the Eleventh Circuit should be vacated and remanded.

Respectfully submitted,

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APPENDIX

APPENDIX

INTERESTS OF *AMICI CURIAE* JOINING THE NATIONAL WOMEN'S LAW CENTER

9to5

9to5 is a grassroots, member-led organization with 46 years of experience in the movement for women's equality and economic justice. Our work to advance equality sits at the intersections of gender, class, racial, and ethnic justice. 9to5's constituency includes women who are low-income, work in undervalued female-dominated jobs, or have experienced any kind of discrimination. Our members are of diverse ages, ethnicities, sexual orientation and physical/mental challenges. Among 9to5's primary program focuses is the effort to eliminate all forms of discrimination in the workplace. We support legal protections against discrimination based on sexual orientation, and gender identity and expression, among others, as well as stronger penalties for violation existing anti-discrimination laws at the federal and state levels.

A Better Balance

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through its legal clinic, A Better Balance provides direct services to low-income workers on a range of issues, including employment discrimination based on pregnancy and/or caregiver status. A Better Balance is also working to combat LGBTQ employment discrimination through its national LGBT Work-Family project. The workers we serve, who are often struggling to care for their families while holding down a job, are particularly vulnerable to discrimination on the basis of their sexual orienta-

tion and/or gender identity, as well as to retaliation that discourages them from complaining about illegal discrimination.

American Association of University Women

In 1881, the American Association of University Women (AAUW) was founded by like-minded women who had defied society's conventions by earning college degrees. Since then, it has worked to increase women's access to education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports equitable access and advancement in employment, free from systemic barriers and biases, including vigorous enforcement of employment discrimination statutes.

Atlanta Women for Equality

Atlanta Women for Equality is a nonprofit organization dedicated to providing free legal advocacy to women and girls facing sex discrimination in the workplace or school, and to helping our community build employment and educational environments according to true standards of equal treatment. Our central goal is to use the law to overcome the oppressive power differentials that socially predetermined gender roles impose, and to empower those who suffer adverse treatment because they do not fit within the confines of sex-based stereotypes.

California Women Lawyers

California Women Lawyers (CWL) is a non-profit organization chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, to eliminate all inequities based on gender, and to provide an organization for collective action and expression germane to the aforesaid purposes. CWL has also participated as *amicus curiae* in a wide range of cases to secure the equal treatment of women and other classes of persons under the law.

California Women's Law Center

The California Women's Law Center (CWLC) is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls through impact litigation, advocacy, and education. CWLC's issue priorities include gender discrimination, violence against women, economic justice, and women's health. For 30 years, CWLC has placed an emphasis on eliminating all forms of gender discrimination, including discrimination based on sexual orientation. CWLC remains committed to supporting equal rights for LGBTQ people, and to eradicating invidious discrimination in all forms, including eliminating laws and policies that reinforce traditional gender roles.

The Center for Reproductive Rights

The Center for Reproductive Rights (the "Center") is a global advocacy organization that uses the power of law to advance reproductive rights as fundamental human rights around the world. In the United States, the Center's work focuses on ensuring that all people

have access to a full range of high-quality reproductive health care. The Center has a vital interest in ensuring that all people can participate with dignity as equal members of society, free from sex discrimination, including sex stereotyping.

The Chicago Alliance Against Sexual Exploitation

The Chicago Alliance Against Sexual Exploitation (CAASE) is an Illinois-based not-for-profit that promotes gender equality by opposing sexual harm by directly addressing the culture, institutions, and individuals that perpetrate, profit from, or support such harms. CAASE engages in legal services, prevention education, community engagement, and policy reform. CAASE's legal department provides direct legal services to survivors of sexual exploitation, including sexual assault and prostitution. On behalf of its individual clients and in support of its overall mission, CAASE is interested in seeing that federal and state laws and precedent related to sex-based discrimination are appropriately interpreted and applied so as to further—and not undermine—gender equality.

The Clearinghouse on Women's Issues

The mission of the Clearinghouse on Women's Issues (CWI) is to provide information on issues relating to women, including discrimination on the basis of gender, age, ethnicity, marital status or sexual orientation, with particular emphasis on public policies that affect the economic, educational, health and legal status of women; cooperate and exchange information with organizations working to improve the status of women; and take action and positions compatible with our mission.

Colorado Organization for Latina Opportunity and Reproductive Rights

Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR) is a Denver-based grassroots non-profit that provides a voice on reproductive rights, health and justice for Latinas, their families and allies.

Congregation of Our Lady of the Good Shepherd, US Provinces

Our work in over 70 countries focuses primarily on women and girl empowerment. We address these concerns in a variety of ways but in particular to address those issues which caused by any form of discrimination.

End Rape on Campus

End Rape on Campus (EROC) is a national 501(c)(3) nonprofit organization that works to end campus sexual violence through direct support for survivors and their communities; prevention through education; and policy reform at the campus, local, state, and federal levels. This case is an important step in ensuring that educational institutions prevent student-on-student sexual harassment. We seek to change culture in order to create a world free from sexual violence, and work to end gender-based discrimination and all forms of violence in educational settings, for students, faculty, and all members of a university community.

Equal Rights Advocates

Equal Rights Advocates (ERA) is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in

1974, ERA has sought to end gender discrimination in employment and education, and advance equal opportunity for all by litigating historically significant cases in both state and federal courts, including two of the first U.S. Supreme Court cases addressing Title VII's prohibition of discrimination "because of . . . sex" and its application to pregnant workers, *Geduldig v. Aiello*, 417 U.S. 484 (1974) and *Richmond Unified Sch. Dist. v. Berg*, 434 U.S. 158 (1977). ERA has participated as *amicus curiae* in scores of cases involving the interpretation of Title VII and other anti-discrimination laws, including *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993); *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006); and *Ledbetter v. Goodyear*, 550 U.S. 618 (2007). Because ERA recognizes that sex discrimination often is justified by or based on stereotypes and biased assumptions about the roles that women and men can or should play in the public and private sphere, we have supported the recognition and application of these laws, and the constitutional principles of equal protection and due process to LGBTQ persons in *amicus curiae* briefs filed in numerous cases, including *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), and *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).

Feminist Majority Foundation

Founded in 1987, the Feminist Majority Foundation (FMF) is a cutting-edge organization devoted to women's equality, reproductive health, and non-violence. FMF uses research and action to empower women economically, socially, and politically through public policy development, public education programs, grassroots organizing, and leadership development. Through all of its programs, FMF works to end sex discrimination

and achieve civil rights for all people, including people of color and LGBTQ individuals.

Futures Without Violence (FUTURES)

Futures Without Violence (FUTURES) is a national nonprofit organization that has worked for over thirty years to prevent and end gender-based violence around the world. FUTURES mobilizes concerned individuals, advocacy groups, the justice system, allied professionals, women's rights, civil rights, and other social justice organizations to join the campaign to end violence through programs, public education and prevention campaigns, public policy reform, model training, and advocacy.

Transgender and gender non-conforming individuals experience higher rates of violence across the lifespan, and many have poor health and economic outcomes due to sexism, homophobia, transphobia, and often, racism impacting their access and opportunities in receiving adequate healthcare, in education, and in the workplace. Because of this, FUTURES has long sought to ensure that all individuals, regardless of gender, transgender status, or gender expression, have the right to access services and supports provided for under the Violence Against Women Act, and can avail themselves of the protections within our nation's anti-discrimination laws. As an organization that cares about those vulnerable to experiencing violence, FUTURES joins in this briefing to protect the rights of all individuals to work and live free from discrimination, harassment, and abuse.

Girls Inc.

Girls Inc. is a nonprofit organization that inspires girls to be strong, smart, and bold, through direct service and advocacy. Eighty local Girls Inc. affiliates

throughout the U.S. and Canada provide primarily after-school and summer programming to approximately 156,000 girls ages 5-18. Our comprehensive approach to whole girl development equips girls to navigate gender, economic, and social barriers, and grow up healthy, educated, and independent. Informed by girls and their families, we also advocate for policies and practices to advance the rights and opportunities of girls and young women. Combatting sex discrimination in schools and the workplace, including discrimination based on sexual orientation and gender identity, is a top priority for Girls Inc. because of the harmful effects discrimination has on the financial security and overall wellbeing of girls, women, and LGBTQ individuals.

If/When/How: Lawyering for Reproductive Justice

If/When/How: Lawyering for Reproductive Justice is a legal organization that, for more than a decade, has built a powerful network of thousands of lawyers, law students, and former reproductive justice fellows who work for a future when all people can self-determine their reproductive lives free from discrimination, coercion, or violence. With our network, we work to transform the law and policy landscape through advocacy, support, and organizing so all people have the power to determine if, when, and how to define, create, and sustain families with dignity and to actualize sexual and reproductive wellbeing on their own terms. Freedom from employment discrimination based on gender, gender identity, and sexual orientation are critical to maintaining economic security for individuals and their families. If/When/How joins this brief because sex stereotyping harms LGBTQ people and women, and perpetuates the same second class status based on gender that Title VII is designed to upend.

Jewish Women International

Jewish Women International is a nonprofit organization founded in 1897 dedicated to ensuring that all women and girls thrive in healthy relationships, enjoy long-term economic security, and are able to access opportunities that further their professional growth. As a Steering Committee member of the National Task Force to End Sexual and Domestic Violence, JWI works to ensure that federal legislation, in particular the Violence Against Women Act, includes anti-discrimination protections for all persons.

KWH Law Center for Social Justice and Change

KWH Law Center for Social Justice and Change is a non-profit Law Center focused on advancing economic opportunities for women and girls in the South and Southwest. We strongly support the application and principles of Title VII in bridging the gender equity gap by working to eliminate discrimination on the basis of sexual orientation or gender identity. We work to ensure equal access to the full range of protections offered by Title VII critical not only to protecting the rights of LGTBQ employees, but also the rights of all women. Accordingly, the Law Center is uniquely qualified to comment on the three cases of *Altitude Express, Inc. v. Zarda*, *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC*, and *Bostock v. Clayton County*, *Georgia* currently before the United States Supreme Court.

Legal Momentum, the Women's Legal Defense and Education Fund

Legal Momentum, the Women's Legal Defense and Education Fund (formerly NOW Legal Defense and Education Fund), is a leading national non-profit civil rights organization that for nearly 50 years has used

the power of the law to define and defend the rights of girls and women. Legal Momentum has worked for decades to ensure that all employees are treated fairly in the workplace, regardless of their gender or sexual orientation. Legal Momentum has litigated cutting-edge gender-based employment discrimination cases including *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and participated as *amicus curiae* before this Court on leading cases in this area, including *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998); and *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993). Legal Momentum has long worked to eradicate the gender-based stereotypes that unjustly diminish rights and opportunities, including those related to sexual orientation and gender identity.

Legal Voice

Legal Voice, founded in 1978 as the Northwest Women's Law Center, is a non-profit public interest organization dedicated to protecting the rights of women and their families through litigation, legislative advocacy, and the provision of legal information and education. Legal Voice's work includes decades of advocacy in the courts and in the Washington Legislature to advance the rights of LGBTQ people and to ensure the rights of all Washingtonians to be free from discrimination based on their sex, sexual orientation, and gender identity or expression. Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country, and has been granted leave to appear as *amicus curiae* by this Court on many occasions.

NARAL Pro-Choice America

NARAL Pro-Choice America is a national advocacy organization, dedicated since 1969 to supporting and protecting, as a fundamental right and value, an individual's freedom to make personal decisions regarding the full range of reproductive choices through education, organizing, and influencing public policy. NARAL Pro-Choice America works to guarantee every person the right to make personal decisions regarding the full range of reproductive choices. Recognizing a person's right to privacy, dignity, and bodily autonomy, and ensuring that all people in the United States have access to comprehensive reproductive health care is crucial to that mission.

National Alliance to End Sexual Violence

The National Alliance to End Sexual Violence (NAESV) is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1500 rape crisis centers working in their communities to support survivors and end sexual violence. The advocates in our network see every day the widespread and devastating impacts of sexual violence especially on those who are more marginalized in society. NAESV believes that all oppression is linked to sexual violence and cannot be ended unless all people are treated fairly and protected under the law.

National Council of Jewish Women

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families, and by safeguarding individual rights and freedoms. NCJW's Resolutions state that

NCJW resolves to work for "[l]aws and policies that provide equal rights for all regardless of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, gender identity and expression, economic status, immigration status, parenthood status, or medical condition." Consistent with our Principles and Resolutions, NCJW joins this brief.

National Crittenton

National Crittenton, founded in 1883, catalyzes social and systems change for girls and young women impacted by chronic adversity, violence, and injustice. We serve as the umbrella for the 26 members of the Crittenton family of agencies providing direct services in 31 states and the District of Columbia. Together we work to advance services, systems, and policies that address the unique needs of girls and young women at the national level and in local communities across the country. Core to everything we do is the right of girls, young women, and women to achieve their potential without enduring sexual violence, including harassment and discrimination based on gender in schools, in the workplace, and the development and implementation of laws and policies.

National Partnership for Women & Families

The National Partnership for Women & Families (formerly the Women's Legal Defense Fund) is a national advocacy organization that develops and promotes policies that help achieve fairness in the workplace, reproductive health and rights, quality health care for all, and policies that protect and help women and men as they manage the demands of work and family. Since its founding in 1971, the National Partnership has worked to advance equal opportunities and fairness through several means, including by taking a leading

role in the passage of the Pregnancy Discrimination Act of 1978 and the Family and Medical Leave Act of 1993, and by challenging discriminatory practices in the courts.

North Carolina Coalition Against Domestic Violence

The North Carolina Coalition Against Domestic Violence (NCCADV) is a statewide non-profit organization that works to end domestic violence in North Carolina. NCCADV does this work through interagency collaborations, innovative trainings, prevention efforts, state policy development, and legal advocacy. NCCADV believes it is critical to serve all survivors of domestic violence, regardless of sexual orientation, gender identity, race, age, socioeconomic status, ability, religious belief, and immigration status.

Sexuality Information and Education Council of the United States

The Sexuality Information and Education Council of the United States (SIECUS), founded in 1964, is a nonprofit policy and advocacy organization that envisions an equitable nation where all people receive comprehensive sexuality education and quality sexual and reproductive health services affirming their identities, thereby ensuring their lifelong health and well-being. SIECUS advocates for the rights of all people to the full spectrum of sexual and reproductive health services, as well as accurate information and comprehensive sexuality education. SIECUS has a history of working on issues around sex discrimination, and preventing discrimination based on sexual orientation and gender identity and expression is pivotal to our work on reproductive rights.

SisterSong

SisterSong amplifies the lived experiences of Indigenous women and women of color to build an effective network of individuals and organizations to improve institutional policies and systems that impact the reproductive lives of marginalized communities.

UltraViolet

UltraViolet is a community of women and men across the U.S. mobilized to fight sexism and expand women's rights, from politics and government to media and pop culture. UltraViolet works on a range of issues, including health care, economic security, violence, and reproductive rights.

Women Employed

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed believes that barring discrimination "because of . . . sex" encompasses challenging cases that address Title VII's protections for LGBTQ individuals.

Women of Reform Judaism

Founded in 1913, Women of Reform Judaism (WRJ) strengthens the voice of women worldwide and empowers them to create caring communities, nurture congregations, cultivate personal and spiritual growth, and advocate for and promote progressive Jewish values. Representing more than 65,000 women in nearly 500 women's groups in North America and around the

world, WRJ comes to this issue out of our deep commitment to ensuring equality for all of God's children. We oppose discrimination against all individuals and are committed to the full equality, inclusion, and protection of people of all gender identities, gender expressions, and sexual orientations, for the stamp of the Divine is present in each and every human being.

The Women's Law Center of Maryland, Inc.

The Women's Law Center of Maryland, Inc. (WLC) is a non-profit, membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, employment law, family law, and reproductive rights. Through its direct services and advocacy, WLC seeks to protect women's legal rights and ensure equal access to resources and remedies under the law. WLC is participating as an *amicus curiae* in *Zarda v. Altitude Express, R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC,* and *Bostock v. Clayton County, Georgia* because it agrees with the proposition that sex, gender, and sexual orientation are intrinsically intertwined, particularly in the realm of discrimination. The concerns and struggles of the LGBTQ community impact all women, regardless of sexual orientation.

Women's Law Project

The Women's Law Project (WLP) is a non-profit legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, WLP's mission is to create a more just and equitable society by advancing the rights and status of women through high impact litigation, policy advocacy, public education, and individual counseling. Throughout its history, WLP has worked to eliminate discrimination

based on sex, including gender stereotyping, by bringing and supporting litigation challenging discriminatory practices prohibited by civil rights laws, including Title VII. WLP has a strong interest in the proper application of civil rights laws to provide appropriate and necessary redress to individuals victimized by discrimination.

The Womxn Project

The Womxn Project (TWP) is a non-profit organization in Rhode Island focused on building a strong, feminist, community-based movement to further human rights of Rhode Islanders by using art and activism to advance education and social change. We are committed to ensuring that our work centers and amplifies the needs of people pushed to the margins by systemic oppression.

Planned Parenthood Federation of America

Planned Parenthood Federation of America (PPFA) is the oldest and largest provider of reproductive health care in the United States, including to the LGBTQ community, delivering medical services through more than 600 health centers operated by its affiliates. Its mission is to provide comprehensive reproductive health care services and education, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to health services. PPFA affiliates provide care to approximately 2.4 million individuals each year. In particular, PPFA is at the forefront of providing high-quality reproductive health care to individuals and communities facing serious barriers to obtaining such care—especially LGBTQ individuals, individuals with low income, individuals in rural and other medically underserved areas, immigrant populations, and communities of color.