No. 09-1446

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LYNETTE HARRIS,
Plaintiff-Appellant,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRIEF OF *AMICI CURIAE* NATIONAL WOMEN'S LAW CENTER *ET AL.* IN SUPPORT OF APPELLANTS' BRIEF URGING REVERSAL

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INTEREST OF AMICI CURIAE

Amici curiae are organizations dedicated to eradicating unlawful discrimination in the workplace. In furtherance of this purpose, each has an abiding interest in ensuring the proper interpretation and implementation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., ("Title VII"), which prohibits employment discrimination, including workplace harassment, on the bases of sex, race, color, religion, and national origin. *Amici* submit this brief to address two very troubling aspects of the decision below: (1) the district court's creation of a *new*, heightened standard for hostile work environment cases, on which the court improperly based its ruling that plaintiff could not show that the sexual harassment she endured was severe or pervasive enough to be actionable under Title VII; and (2) the district court's failure to properly consider the harassing conduct in the context of the surrounding circumstances. Statements of interest of *amici* are attached.[1]

INTRODUCTION

Contrary to the well-settled Title VII standards for hostile environment claims, the district court created its *own*, heightened standard,

[1] A separate *amicus* brief filed by The National Partnership for Women and Families addresses the district court's decision that the complained-of conduct is not actionable because it did not occur because of plaintiff's sex.

stating that "Title VII restricts only the most extreme conduct" and holding that if harassing conduct is not physical in nature, it must consist of "an extreme level of verbal inappropriateness directed specifically at the plaintiff" in order to be severe enough to support a hostile environment claim.

The district court developed this standard despite several longstanding Title VII principles established by the U.S. Supreme Court, this court, and many others, as well as the Equal Employment Opportunity Commission ("EEOC"). First, it is well settled that harassing conduct does not have to be physical in nature to be actionable. *EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 318 (4th Cir. 2008); *Smith v. First Union Nat'l Bank*, 202 F.3d 234, 242 (4th Cir. 2000). Second, as this court has held multiple times, including in an *en banc* decision, verbally harassing conduct does not have to be directed specifically at the plaintiff in order to create – or contribute to the creation of – a hostile work environment. *Jennings v. Univ. of North Carolina*, 482 F.3d 686, 696-98 (4th Cir. 2007) (*en banc*) (applying Title VII standards to Title IX sexual harassment case); *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 184 (4th Cir. 2001). This is because "Title VII affords employees the right to work in an *environment* free from discriminatory intimidation, ridicule, and insult." *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65

(1986) (emphasis added). Third, conduct does not have to be "the most extreme" to support a hostile environment claim; rather, Title VII is violated "[w]hen the workplace is permeated with 'discriminatory intimidation, ridicule, and insult . . . that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22-23 (1993) (internal citations omitted).

The new, heightened standard the district court created not only is contrary to the law, it is overly burdensome and defies common sense, as well as the years of practical experience that the EEOC and federal courts have evaluating hostile environment cases.[2] Such a standard would shield employers from liability for workplace harassment – based not just on sex, but on any characteristics protected by Title VII[3] – and would improperly

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[2] EEOC guidelines, "while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

[3] The Title VII hostile environment standards apply not only to sex-based harassment, but also to workplace harassment based on any of the characteristics protected by Title VII, including race, national origin, and religion. *Harris*, 510 U.S. at 25 (Ginsburg, J., concurring). These standards also would likely apply under the Americans with Disabilities Act and the Age Discrimination in Employment Act, in cases of disability or age-based harassment. *See Enforcement Guidance on Harris v. Forklift Sys., Inc.*, 1994 WL 1747814, E.E.O.C. Policy Guidance No. 915.002 (March 8, 1994), at *6 ("1994 EEOC Enforcement Guidance").

enable them to ignore any harassing conduct that is not physical in nature and not extreme and directed specifically at the victim. This would undermine the purpose and effect of Title VII's broad workplace harassment protections, as well as Congress's intent to mandate discrimination-free workplaces.

The district court's errors were compounded by its failure to consider the harassing conduct in light of the surrounding circumstances, a critical part of any hostile environment analysis. After finding that almost none of the plaintiff's evidence met its fabricated threshold test, the court then held that the two instances where the plaintiff was called a "b-tch" directly, by themselves, were not severe or pervasive enough to create a hostile environment. As a result, the court essentially considered those two instances of harassment in isolation and never meaningfully addressed the full range of conduct endured by the plaintiff in its totality. The court also failed to consider the conduct in light of the context in which it occurred – the plaintiff was one of very few female employees in a male-dominated electrical maintenance shop – or from the perspective of a reasonable person in that position. But as the Supreme Court has explained, the analysis of whether sexual harassment is severe or pervasive enough to create a hostile work environment "is not, and by its nature cannot be, a mathematically

precise test;" "whether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances." *Harris,* 510 U.S. at 22-23. Importantly, no single factor in the analysis is determinative. *Id.* at 23. Rather, the factfinder must consider the harassing conduct in light of all the surrounding circumstances and assess whether it would create a hostile environment both from the perspective of the plaintiff and the perspective of a reasonable person in the plaintiff's position. *Id.* at 22.

For these reasons, and for the reasons set forth both in the appellant's opening brief and in the *amicus* brief filed by the National Partnership for Women and Families, this court should reverse the district court's decision granting summary judgment to the defendants.

ARGUMENT

The standard applied to the "severe or pervasive" analysis in this case was a *new*, heightened standard that the district court created with no justification and contrary to established Title VII law. The court also failed to consider the harassment in light of the surrounding circumstances as Title VII dictates. When the correct Title VII standards are applied and the harassing conduct is considered in light of the surrounding circumstances, the evidence presented by plaintiff Lynette Harris ("Harris" or "plaintiff") – especially viewed in the light most favorable to her – fully supports a hostile

environment claim against defendants Mayor and City Council of Baltimore ("City" or "defendants").

I. THE STANDARD CREATED AND APPLIED BY THE DISTRICT COURT DEPARTS FROM THE ESTABLISHED TITLE VII STANDARDS FOR HOSTILE ENVIRONMENT WORKPLACE HARASSMENT.

The district court created its own, heightened hostile environment standard, declaring that Title VII restricts only "the most extreme" conduct and that in the absence of physical conduct "courts have required an extreme level of verbal inappropriateness directed specifically at the plaintiff."[4] Mem. Op. at 32. This fabricated standard goes against the law as firmly established by the holdings of the Supreme Court and this court – including a recent *en banc* decision of this court.

The Supreme Court and lower courts undertake a multi-factor analysis to determine whether harassing conduct is "severe or pervasive" enough to create a hostile environment. *Harris*, 510 U.S. at 23. Among the many factors that may be considered are:[5] the frequency of the harassment; its severity; whether it is physically threatening or humiliating; and whether the

[4] Notably, the district court did not cite any cases or other sources for this proposition. Mem. Op. at 32.

[5] In the guidance it issued following the Supreme Court's *Harris* decision, the EEOC explained that the four *Harris* factors are not the only ones that can be considered in evaluating hostile environment claim, and instructed its investigators to also consider any other factors that are relevant in a particular case. 1994 EEOC Enforcement Guidance, at *4.

harassment "so altered working conditions as to 'make it more difficult to do the job.'" *Id.* at 23, 25 (Ginsburg, J., concurring) (quoting *Davis v. Monsanto Chemical Co.*, 858 F.2d 345, 349 (6th Cir. 1988) (concerning race-based discrimination)).[6] As the text of Title VII instructs, "[t]he critical issue . . . is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." *Id.* Courts must look at all of the surrounding circumstances, and no single factor is required to sustain a claim. *Id.*

A. Harassing conduct need not be physical in nature to support a hostile environment claim.

As the district court recognized, harassing conduct does not have to be physical to be "severe or pervasive" enough to create a hostile environment. Mem. Op. at 32. This court has held that even without "any allegations of unwanted touching, overt sexual propositions, or physical threats," harassment can be sufficiently severe to sustain a hostile work environment claim:

> A work environment consumed by remarks that intimidate, ridicule, and maliciously demean the status of women can

[6] In its guidance following *Harris v. Forklift Systems*, the EEOC also expressed its agreement with Justice Ginsburg that an employee attempting to show that the harassing conduct unreasonably interfered with his/her work performance need show only that the offensive conduct made it more difficult for him/her to do his/her job, not that it resulted in diminished performance. 1994 EEOC Enforcement Guidance, at fn.2.

> create an environment that is as hostile as an environment that contains unwanted sexual advances.

Smith, 202 F.3d at 242; *Sunbelt Rentals,* 521 F.3d at 318 (stating in a religious harassment case that "[n]ames can hurt as much as sticks and stones, and the Supreme Court has never indicated that the humiliation so frequently attached to hostile environments need be accompanied by physical threat or force"); s*ee also Andrews v. City of Philadelphia*, 895 F.2d 1469, 1485 (3d Cir. 1990) (use of derogatory and insulting terms relating to women may serve as evidence of a hostile environment, as may posting of pornographic pictures in common areas). Even when the conduct at issue was not physically threatening and did not consist of sexual advances, unlawful harassment has in some cases "created an environment consumed by remarks that ridiculed and demeaned the status of women," especially when considered in context and from the perspective of the victim(s). *EEOC v. R&R Ventures,* 244 F.3d 334, 340 (4th Cir. 2001) ("incessant put-downs, innuendos, and leers" by adult male supervisor caused teenage female employees "to become sick at the prospect of going to work").

B. Harassment need not be directed specifically at the victim to create a hostile environment.

This court also has held repeatedly that evidence of an atmosphere of general hostility towards women – even where harassing conduct is not

directed specifically at the plaintiff – can support a hostile environment claim and must be considered as part of the totality of circumstances. As this court explained in *Spriggs*:

> Although [defendant] contends that conduct targeted at persons other than [plaintiff] cannot be considered, its position finds no support in the law. We are, after all, concerned with the "environment" of workplace hostility, and whatever the contours of one's environment, they surely may exceed the individual dynamic between the complainant and his supervisor.

Spriggs, 242 F.3d at 184. *Spriggs* was a racial harassment case where racial epithets were used frequently in the workplace but not targeted at the plaintiff, and this court found them to be "sufficiently severe or pervasive (or both) to cause a person of ordinary sensibilities to perceive that the work atmosphere . . . was racially hostile." *Id.* at 185.

In a recent *en banc* decision, this court stated that "[e]vidence of a general atmosphere of hostility toward those of the plaintiff's gender is considered in the examination of all the circumstances." *Jennings*, 82 F.3d at 696. In *Jennings*, even though only two of the instances of a university coach's ongoing verbal sexual harassment of his soccer team were directed specifically at the plaintiff student, this court said that a jury could reasonably find those two incidents of harassment directed at Jennings to be

> more abusive in light of the general, sexually charged environment. In other words, the incidents were not isolated

> events, but were part of an abusive pattern that instilled fear and dread.

Id. at 698. Based on this reasoning, this court considered not only comments made to the plaintiff, but also comments made in her presence, as well as comments made outside her presence but consistent with her account or discussed in her presence. *Id.* at 696-98, 703 (Gregory, J., concurring) ("I do not find evidence that the Supreme Court itself has assumed throughout its Title VII and Title IX cases that only harassment *directed* and *targeted* at the victim was capable of creating a hostile environment.") (internal quotation marks omitted). Ultimately, this court held that a jury could reasonably find the defendant's "persistent sexual harassment was sufficiently degrading to young women to create a hostile or abusive environment."*Id* at 696.[7]

[7] *See also Petrosino v. Bell Atlantic*, 385 F.3d 210, 214, 222 (2d Cir. 2004) (comments, photos and graffiti directed at everyone in workplace could support plaintiff's hostile environment claim because it conveyed a "profound disrespect for women," and "[s]uch workplace disparagement of women, repeated day after day over the course of several years without supervisory intervention, stands as a serious impediment to any woman's efforts to deal professionally with her male colleagues."). The court in *Petrosino* cited a long-respected district court case brought by a female welder who was one of only a handful of female employees working in a large shipyard, *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486, 1495-98 (M.D. Fla. 1991), where that court found that sexually provocative photos of nude and partially nude women constantly displayed around the workplace had "'a disproportionately demeaning impact'" on the female employees and thus "'convey[ed] the message that [women] do not belong.'" *Petrosino*, 385 F.3d at 1522-23.

Last year, this court held again that conduct does not have to be directed at the plaintiff or even witnessed by her to be relevant to the nature of the workplace environment and considered as part of the totality of circumstances. *Ziskie v. Mineta*, 547 F.3d 220, 224-25 (4th Cir. 2008). In *Ziskie*, the plaintiff employee complained of sexually harassing remarks and conduct made around the workplace but not directed at her, relying in part on affidavits from her co-workers regarding conduct she did not witness. *Id.* at 224-25, 228. This court remanded the case for the district court to assess the evidence – including the co-workers' affidavits – under the correct standard and to determine whether a jury could conclude that the plaintiff and her co-workers "found their working conditions altered on account of a severe or pervasive atmosphere of gender animus." *Id.* at 228-29.

By contrast, the heightened standard adopted by the district court in this case goes way too far, drawing bright lines to categorically exclude conduct that is not physical or extreme and directed specifically at the plaintiff, regardless of the circumstances and the environment created by that conduct. Harris' male co-workers' and supervisors' verbally harassing conduct and their constant display in common areas of naked photos of women, even if not directed specifically at Harris, created an environment that Harris perceived as hostile to women in the workplace – as would any

reasonable person in her position.[8] And in fact, Harris was excluded daily from staff meetings and made to sit during those times at a table covered with pornographic photos. Mem. Op. at 5. A reasonable factfinder could conclude that this substantially harassing behavior *was* directed specifically at the plaintiff herself. By making the opposite factual determination on its own and granting summary judgment, the court usurped the role of the jury.

C. Harassing conduct need not be "the most extreme" to be prohibited by Title VII.

The district court incorrectly concluded that plaintiff's claims could not survive summary judgment because the two harassing incidents the court *did* consider actionable – in which Harris herself was called a "b-tch" – were not the *most* extreme, saying that "Title VII restricts only the most extreme conduct." Mem. Op. at 32. While some courts may use the word "extreme" to describe conduct that meets the "severe or pervasive" test, that word does not heighten a plaintiff's burden under the "severe" prong of the analysis. It

[8] Because the district court would not consider any harassing incidents that were not physical or directed specifically at Harris, it also did not appropriately consider the pervasiveness of the harassment. The court acknowledged that the evidence showed that Harris was exposed to offensive conversations daily and offensive photos regularly, and said that "a jury could find that the co-workers' reported frequent use of derogatory and demeaning references to women as "b-tches," "c-nts" and troublemakers" could be seen as sexually motivated and considered in determining whether plaintiff was subject to sex-based harassment," a finding that is inconsistent with a grant of summary judgment to the defendants. Mem. Op. at 30-31.

can be effective at differentiating discriminatory conduct from more "run of the mill" conflicts or tensions between co-workers or between employees and supervisors, and in that context "extreme" serves as another word for "severe." But contrary to the district court's characterization of the harassment endured by plaintiff as not "the most extreme" and thus beyond the reach of Title VII, *id.*, courts' prior use of that word to describe conduct that creates a hostile environment does not mean that the harassing conduct must be the utmost, ultimate, or maximum in outrageous behavior in order to be actionable.

Indeed, as the Supreme Court has noted, "Title VII comes into play before the harassing conduct leads to a nervous breakdown." *Harris*, 510 U.S. at 22. Title VII's "broad rule of workplace equality" can be violated when a work environment is abusive to employees because of their sex, even if the conduct alleged is not as "appalling" as that alleged in some other cases, "[s]o long as the environment would reasonably be perceived, and is perceived, as hostile or abusive." *Id.* While other cases can provide us with "some especially egregious examples" of harassment, "[t]hey do not mark the boundary of what is actionable." *Id.* These standards effectuate Title VII's intent to eliminate barriers to equality in the workplace by "'strik[ing] at the entire spectrum of disparate treatment of men and women in

employment' which includes requiring people to work in a discriminatorily hostile or abusive environment." *Id.* at 21 (quoting *Meritor*, 477 U.S. at 64).

Furthermore, the district court's focus on whether the conduct directed at Harris was "extreme" ignores the totality of circumstances analysis that is so important in hostile environment claims. By contrast, in *Jennings*, only two incidents of harassment were directed specifically at the plaintiff. Instead of focusing – as the district court did in this case – on whether those two instances of verbal harassment directed at the plaintiff were themselves independently actionable or otherwise "extreme," this court held that the two specific plaintiff-directed comments could be viewed as "more abusive in light of the general, sexually charged environment." *Jennings,* 482 F.3d at 698.

D. The context of the harassment must be considered in determining whether a work environment was subjectively and objectively hostile.

The district court also erred by failing to consider the context of the harassing conduct, a critical part of the hostile environment analysis. The Supreme Court has been careful to point out that "[w]orkplace conduct is not measured in isolation," *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 116 (2002) (quoting *Clark County School Dist. V. Breeden*, 532 U.S. 268, 270 (2001)). Again, in assessing the severity or pervasiveness of

discriminatory harassment, the factfinder must consider both subjective and objective components and take into account all of the surrounding circumstances. *See, e.g., Harris,* 510 U.S. at 22-23. In *Oncale,* the Supreme Court emphasized that this inquiry "requires careful consideration of the social context in which particular behavior occurs and is experienced by its target." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75,81 (1998). As Justice Scalia explained:

> The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed. Common sense, and an appropriate sensitivity to social context, will enable courts and juries to distinguish between simple teasing or roughhousing . . . and conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive.

Id. at 81-82; *see also Jennings*, 482 F.3d at 696-97. "Context matters" is the way the Supreme Court more recently reiterated and summarized that standard in *Burlington Northern & Santa Fe Ry Co. v. White,* 548 U.S. 53, 69 (2006). The Court explained that "an 'act that would be immaterial in some situations is material in others.'" *Id.* (internal citations omitted).

In the enforcement guidance issued following *Harris v. Forklift Systems,* the EEOC emphasized the importance of considering the context of the harassing conduct and looking at the circumstances from the perspective of a reasonable person in the plaintiff's position. 1994 EEOC Enforcement

Guidance, at *4. The agency cautioned, as it had in previous guidance, that "'[t]he reasonable person standard should consider the victim's perspective and not stereotyped notions of acceptable behavior.'" *Id.* at *5 (quoting "Current Issues of Sexual Harassment," EEOC Policy Guidance No. N-915-050, CCH ¶ 3114 (March 19, 1990)).

Similarly, other cases acknowledge the importance of context and evaluating the conduct at issue from the perspective of a reasonable person in the victim's position:

> Obscene language and pornography quite possibly could be regarded as "highly offensive to a woman who seeks to deal with her fellow employees and clients with professional dignity and without the barrier of sexual differentiation and abuse." Although men may find these actions harmless and innocent, it is highly possible that women may feel otherwise.

Andrews, 895 F.2d at 1485-86 (internal citations omitted); *Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325, 332 (4th Cir. 2003) ("A reasonable jury could find that much of the sex-laden and sexist talk and conduct in the production shop was aimed at [plaintiff] because of her sex – specifically, that the men behaved as they did to make her uncomfortable and self-conscious as the only woman in the workplace.").

In this case, the context of the harassment is critical to the "severe or pervasive" analysis. Even if each type or incident of harassing conduct in isolation is not severe or pervasive on its own, all of the incidents taken

together, especially under the circumstances, create an undeniably hostile environment. Like the plaintiff in *Burlington Northern*, who was the only woman in the railroad yard, 548 U.S. at 57, as an electrical maintenance technician Harris worked in a field that is not traditional for women, and she was one of very few female employees in a male-dominated shop. App. at 436. This fact likely intensified the harassment that Harris experienced, and would render the environment even more hostile or abusive from her perspective and that of a reasonable person in her situation.[9] At the very least, the district court should not have rejected that possibility outright by granting summary judgment to the defendants. The district court never explained why Harris' evidence of frequent and persistent harassment, taken together, could not support a hostile environment claim – except to say repeatedly that there was not enough evidence of conduct directed at Harris, which again, does not as a matter of law preclude her claims.

E. The established Title VII standards for hostile environment cases are critical to eradicating workplace harassment.

The heightened standard created and applied by the district court in this case departs dramatically from the principles discussed above and would

[9] The notion that a woman in a workplace not traditional for her gender accepts the risk of harassing conduct has long been rejected. *See, e.g.*, *Sunbelt Rentals*, 521 F.3d at 318 (Title VII contains no "'crude environment' exception, and to read one into it might vitiate statutory safeguards for those who need them most.").

have a number of harmful consequences that contradict the letter and spirit of Title VII. By setting an extraordinarily high bar for bringing a hostile environment claim, the district court's standard would ultimately discourage employees from reporting workplace harassment, which would leave many people harassed at work without a remedy, forced either to continue working under hostile conditions or to quit their jobs.

The heightened standard also would enable employers to ignore any workplace harassment that is not physical in nature or extreme and directed specifically at a particular employee, no matter how severe or pervasive the conduct may be – even if the workplace is saturated with conduct, language, and images that project hostility toward women or other protected groups and thus negatively impact an employee's ability to do his or her job. It would severely limit employers' motivation to crack down on harassment in the workplace, so that even when such conduct is reported by an employee, employers would be less likely to promptly address and remedy the situation satisfactorily. These are the polar opposites of the incentives Title VII was intended to create for employers and employees.

II. APPLICATION OF THE CORRECT STANDARDS AND CONSIDERATION OF THE TOTALITY OF CIRCUMSTANCES WOULD HAVE DICTATED A DIFFERENT RESULT IN THIS CASE.

As the above discussion demonstrates, the district court's analysis is incorrect as a matter of law. The district court's conclusion that the plaintiff's evidence was not sufficient to carry her case forward because so much of the conduct at issue was not directed at her and because it was not "the most extreme," Mem. Op. at 32, must be reversed. Looking at the evidence in light of the surrounding circumstances and context and drawing all reasonable inferences in Harris' favor, a factfinder could reasonably conclude that the sexual harassment Harris endured over a period of five years while employed with the City DPW was severe *and* pervasive[10] enough to create a work environment permeated with gender animus.

The DPW was a male-dominated workplace, and Harris was one of very few female employees there. App. at 436. Harris' male co-workers and supervisors referred to women as "b-tches," "c-nts," and "troublemakers," on a daily basis, and they called Harris a "b-tch" on at least

[10] Although harassment need not be *both* severe and pervasive to create a hostile environment – either severe *or* pervasive conduct will suffice, *Spriggs,* 242 F.3d at 185; *Smith v. Sheahan*, 189 F.3d 529, 533 (7th Cir. 1999) – in this case, plaintiff presented evidence from which a reasonable factfinder could conclude that the conduct to which she was subjected met both tests.

two occasions. Mem. Op. at 4-5, 7-10. They filled the workplace, including common areas such as the lunchroom, with pornographic photographs of partially clothed and naked women. Mem. Op. at 4, 8-9. They engaged in graphic sexual conversations regularly, and at least weekly performed offensive and vulgar gestures in common work areas; given their frequency and location, it was impossible for a woman to avoid such comments and gestures. Mem. Op. at 6-7; App. at 436. Although Harris and other female employees complained about the sexually hostile environment, including the pornographic photographs, the Personnel Department largely ignored their complaints. Mem. Op. at 5, 8; App. at 514, 516, 630-35.

Additionally, on a daily basis between July 2002 and February 2005, a male supervisor excluded Harris from a daily staff meeting, and instead forced her to spend those hours sitting at a table covered with pornographic photographs of women. Mem. Op. at 5. In this environment, female employees were afraid to complain, for fear of reprisals. App. at 440-42. No women held supervisory positions in Harris' department. App. at 396, 399, 517. Male supervisors routinely gave women less responsibility and less prominent assignments than those given to their male counterparts. Mem. Op. at 6; App. at 399. Harris' supervisors also undermined her ability to do her job by forcing her to perform tasks alone and in an unsafe

environment. Mem. Op. at 6; App. at 438-441. This sexually hostile workplace took a severe toll on Harris' mental health, App. at 484-88, and undoubtedly made it more difficult for Harris to do her job. App. at 486-89..

From this sufficient evidence – which more than meets the tests set by the Supreme Court and this court to demonstrate a hostile work environment – a factfinder could conclude that Harris' work environment was permeated with remarks, gestures, photographs, and conduct demeaning the status of women. *See R&R Ventures*, 244 F.3d at 340. A trier of fact could reasonably find, based on the frequent occurrence of such harassing and degrading conduct in a male-dominated setting with very few female employees, "that the harasser[s] [were] motivated by general hostility to the presence of women in the workplace." *Oncale*, 523 U.S. at 80. The district court's failure to consider the totality of the circumstances in this case flies in the face of Title VII precedent. And the court itself acknowledged that the conduct at issue would "be destructive of a productive work environment and the basic human dignity of those working there," Mem. Op. at 40, which virtually defines hostile environment workplace harassment under the governing legal standards.

CONCLUSION

For the reasons set forth above, the decision of the district court granting the defendants' motion for summary judgment should be reversed.

Respectfully submitted,

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INTEREST OF THE AMICI

The *American Civil Liberties Union* (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members, dedicated to preserving the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The ACLU of Maryland is the local affiliate of the ACLU in Maryland, and has over 14,000 members and supporters. Through its Women's Rights Project (founded in 1972 by Ruth Bader Ginsburg), the ACLU has long sought to ensure that the law provides individuals with meaningful protection from sexual harassment and other forms of discrimination on the basis of gender. Likewise, the ACLU of Maryland regularly provides counsel in women's rights and employment discrimination matters arising in the State of Maryland, and in the Fourth Circuit. Because economic opportunity is the bedrock of personal autonomy, the ACLU seeks to ensure that all women have equal access to employment and fair treatment in the workplace.

The *American Jewish Congress* (AJCongress) is an organization of American Jews founded in 1918 to preserve the political, civil, economic and religious rights of American Jews. It believes that the rights of Jews can best be protected if the rights of all Americans are protected. Although we often think of rights as political constructs, the ability to access the economic opportunities the society offers are no less essential than political rights. Because Title VII's guarantees against harassment in the workplace are essential to ensure universal access to economic opportunities, and the decision below vitiates the strength of those guarantees, AJCongress joins this brief.

The *Anti-Defamation League* ("ADL") was organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races, and to combat hatred, bigotry, discrimination, and anti-Semitism. It is today one of the world's leading civil and human rights organizations. ADL's nearly 100-year history is marked by a commitment to protecting the civil rights of all persons, and to assuring that each person receives equal treatment under the law. In this connection, ADL continues to promote workplaces free of discriminatory intimidation, ridicule, and insult and remains vitally interested in ensuring that an employee with a legitimate hostile work environment claim is afforded the protections long established under Title VII of the Civil Rights Act of 1964.

The *Asian American Justice Center* is a national non-profit, non-partisan organization whose mission is to advance civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Collectively, AAJC and its Affiliates, the Asian American Institute, Asian Law Caucus, and the Asian Pacific American Legal Center of Southern California, have over 50 years of experience in providing legal public policy, advocacy, and community education. AAJC and its Affiliates have a long-standing interest in ensuring the protections guaranteed by Title VII and by the Constitution, and this interest has resulted in AAJC's participation in a number of amicus briefs and before the courts.

The *DC Employment Justice Center* ("EJC") seeks to secure, protect, and promote workplace justice in the DC metropolitan area. Each year the EJC helps over 1500 workers with their employment claims, including sexual harassment and discrimination. Under well-established and fair principles enunciated in Title VII cases, workers are able to hold their employers accountable for discriminatory conduct. Any deviation from these standards will not only undermine the intent and spirit of the law, but permit employers to freely and openly ignore workplace harassment.

The *Lawyers' Committee for Civil Rights Under Law* is a nonprofit civil rights organization that was formed in 1963 at the request of President Kennedy to involve private attorneys throughout the country in the national effort to insure the civil rights of all Americans. Its Board of Trustees includes several past Presidents of the American Bar Association, past Attorneys General of the United States, law school deans and professors and many of the nation's leading lawyers. Through the Lawyers' Committee and its independent local affiliates, hundreds of attorneys have represented thousands of clients in civil rights cases across the country. The Lawyers' Committee is interested in ensuring that the goal of civil rights legislation to eradicate discrimination is fully realized, and is concerned in this case with the potential negative impact on a plaintiff's ability to obtain relief for valid civil rights claims. The resolution of this case will have a significant effect on the extent to which the Lawyers' Committee can protect the rights of its clients.

The *Mexican American Legal Defense and Educational Fund* (MALDEF) is a national civil rights organization established in 1968. Its principal objective is to promote the civil rights of Latinos living in the United States through litigation, advocacy and education. MALDEF's mission includes a

commitment to ensure equal employment opportunities for Latinos. MALDEF has represented Latino and minority interests in civil rights cases in federal courts throughout the nation. During its 40-year history, MALDEF has litigated numerous employment discrimination cases on behalf of Latino employees.

The *National Alliance for Partnerships in Equity* (NAPE) is a consortium of state and local agencies, corporations, and national organizations that collaborate to create equitable and diverse classrooms and workplaces where there are no barriers to opportunities. It focuses on improving the achievement of students in secondary and postsecondary programs that lead to high-skill, high-wage, and nontraditional careers.

The *National Association for Girls and Women in Sport* (NAGWS) is a century-old professional membership organization whose mission is to develop and deliver equitable and quality sport opportunities for all girls and women. Our mission includes addressing issues related to careers, leadership development, equity and women's rights, so signing on in support of this amicus brief is well within our organization's interests.

The *National Employment Law Project* is a non-profit organization that advocates for the rights and needs of low and middle-income workers. We work to deliver the promise of economic opportunity that comes with good jobs. No worker should be forced to labor under discriminatory and hostile conditions. It destroys the work environment and it often impacts the worker's mental and physical health. The guarantee of a good job necessarily implies fair and decent treatment, and NELP joins in the effort to ensure that every worker is treated as such.

The *National Employment Lawyers Association* (NELA) is committed to eradicating unlawful discrimination in the workplace and ensuring that Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), et seq., ("Title VII"), is properly interpreted and implemented. NELA is the largest professional membership organization in the country comprised of lawyers who represent employees in labor, employment and civil rights disputes. NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 68 state and local affiliates have a membership of over 3,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA strives to protect the rights of its members' clients,

and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. To ensure that the rights of working people are protected, NELA has filed numerous *amicus curiae* briefs before the United States Supreme Court and other federal appellate courts regarding the proper interpretation of Title VII and other federal civil rights laws.

The *Sargent Shriver National Center on Poverty Law* (Shriver Center) champions economic opportunity through fair laws and policies so that people can move out of poverty permanently. Our methods blend advocacy, communication, and strategic leadership on issues affecting people living in poverty. National in scope, the Shriver Center's work extends from the Beltway to state capitols and into communities building strategic alliances. Through its Women's Law and Policy Project, the Shriver Center works on issues related to women's employment and economic security. Discriminatory workplace policies and practices have a negative impact on women's immediate and long-term economic security. Non-discrimination in employment is the surest path out of poverty and toward economic well-being. Obtaining and maintaining employment in non-traditional occupations (where women make up 25 percent or less of the workers) is of particular importance for women to reach these goals. The Shriver Center has a strong interest in the eradication of unfair and unjust employment policies and practices, including access to family-sustaining employment, which serve as a barrier to economic equity.

The *Southwest Women's Law Center* is a nonprofit women's legal advocacy organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by eliminating gender discrimination, helping to lift women and their families out of poverty, and ensuring that women have control over their reproductive lives. The Southwest Women's Law Center is committed to eliminating gender discrimination in all of its forms and ensuring broad and meaningful enforcement of anti-discrimination laws in the workplace.

The *Union for Reform Judaism* ("Union") is the congregational arm of the Reform Jewish Movement in North America, including 900 congregations encompassing 1.5 million Reform Jews. The Union has a long-standing commitment to equal rights and social justice, including the rights of women and girls to be free of harassment. In a 1992 resolution on sexual harassment, the Union noted a "deficiency of adequate legal remedies to compensate for emotional trauma and to deter future harassment" and

resolved that "victims should have available to them the full panoply of remedies afforded for other forms of discrimination and injury."

The *Washington Lawyers' Committee for Civil Rights and Urban Affairs***,** a non-profit, public interest organization, seeks to eradicate discrimination and fully enforce the nation's civil rights laws through the provision of legal assistance to the residents of Washington, D.C., Maryland and Virginia. In the Committee's 40-year history, its attorneys have represented thousands of individuals who have alleged discrimination on the basis of race, gender, religion, national origin, color, disability and age, in cases brought under both federal civil rights statutes and local civil rights laws, including the Maryland and Virginia civil rights statutes. The largest and oldest of the Committee's projects is the Equal Employment Opportunity Project, which represents victims of employment discrimination in individual cases and class actions. Defendants in these cases include a multitude of employers in Maryland, Virginia and the District of Columbia. From these cases, the Washington Lawyers' Committee has amassed expertise in the issues of law and procedure that have been raised in the present matter.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-1446

Caption: Harris v. Mayor and City Council of Baltimore, et al.

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s/__*Dina R. Lassow*_____
Attorney for: *Amici Curiae*

Dated: June 10, 2009_____

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2009, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on June 10, 2009, I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants, addressed as follows:

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