No. 09-893

IN THE
Supreme Court of the United States

AT&T MOBILITY LLC,
Petitioner,
v.
VINCENT AND LIZA CONCEPCION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, EMPLOYEE RIGHTS ADVOCACY INSTITUTE FOR LAW & POLICY, NATIONAL EMPLOYMENT LAW PROJECT, NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, and NATIONAL WOMEN'S LAW CENTER IN SUPPORT OF RESPONDENTS

SARAH CRAWFORD
Counsel of Record
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue
Suite 400
Washington, DC 20016
(202) 662-8600
scrawford@lawyerscommittee.com

ADAM T. KLEIN
RACHEL BIEN
NANTIYA RUAN
JENNIFER LIU
OUTTEN & GOLDEN LLP
3 Park Avenue
29th Floor
New York, NY 10016
(212) 245-1000

October 6, 2010

(Additional Counsel Listed on Inside Cover)

TERISA E. CHAW
EMPLOYEE RIGHTS ADVOCACY INSTITUTE
FOR LAW & POLICY
44 Montgomery Street
Suite 2080
San Francisco, CA 94104

CATHERINE RUCKELSHAUS
NATIONAL EMPLOYMENT LAW PROJECT
75 Maiden Lane
Suite 601
New York, NY 10038

REBECCA HAMBURG
NATIONAL EMPLOYMENT LAWYERS ASSOCIATION
44 Montgomery Street
Suite 2080
San Francisco, CA 94104

SHARYN A. TEJANI
NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

EMILY J. MARTIN
NATIONAL WOMEN'S LAW CENTER
11 Dupont Circle
Suite 800
Washington, DC 20036

QUESTION PRESENTED

When a class-action ban that is otherwise unenforceable under generally applicable contract law is embedded in an arbitration agreement, is the contract law preempted by the FAA?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Federal Rules

Other Authorities

STATEMENT OF INTEREST

The following *amici* submit this brief, with the consent of the parties,[1] in support of Respondents' argument that the Federal Arbitration Act ("FAA") does not preclude courts from striking down particular class action bans as unconscionable under generally applicable principles of state contract law.

Although this case arises in the consumer context, the Court's decision could have far-reaching implications in the labor and employment context, where pre-dispute, mandatory arbitration clauses containing class action bans have become increasingly common. *Amici* represent workers who seek to preserve their right to proceed as a class to challenge violations of the law.

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a tax-exempt, nonprofit civil rights organization that was founded in 1963 by the leaders of the American bar, at the request of President John F. Kennedy, in order to help defend the civil rights of minorities and the poor. Its Board of Trustees presently 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. The Lawyers'

---

[1] Counsel for *amici* authored this brief in its entirety. No person or entity other than *amici*, their staff, or their counsel made a monetary contribution to the preparation or submission of this brief. Letters of consent to the filing of this brief have been filed with Clerk of the Court pursuant to Supreme Court Rule 37.3.

Committee, through its Employment Discrimination Project, has been involved in cases before the Court involving the interplay of arbitration clauses and the exercise of rights guaranteed by civil rights laws prohibiting employment discrimination.

The Employee Rights Advocacy Institute for Law & Policy ("The Institute") is a non-profit public interest organization which advocates for employee rights by advancing equality and justice in the American workplace. The Institute achieves this mission through a multi-disciplinary approach, combining innovative legal strategies, policy development, grassroots advocacy, and public education. The Institute seeks to eliminate mandatory pre-dispute arbitration of employment claims through public policy and education initiatives, and in 2009 commissioned a "National Study of Public Attitudes on Forced Arbitration."

The National Employment Lawyers Association ("NELA") advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA provides assistance and support to lawyers in protecting the rights of employees against the greater resources of their employers and the defense bar. NELA is the largest professional membership organization in the country comprised of lawyers who represent employees in labor, employment, and civil rights disputes. NELA and its 68 state and local affiliates have a membership of over 3,000 attorneys committed to working for 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. As part of its advocacy efforts, NELA has filed dozens of *amicus curiae* briefs before the Court and the federal appellate courts regarding the proper interpretation and application of labor and employment statutes to ensure that the goals of those statutes are fully realized. NELA has endorsed the use of class actions as an important tool for vindicating civil rights, whether in a court or through arbitration, so long as arbitration is knowingly and voluntarily agreed to between the parties after disputes arise.

The National Partnership for Women & Families ("The National Partnership") is a non-profit, non-partisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. The National Partnership has devoted significant resources to combating sex, race, age, and other forms of invidious workplace discrimination and has filed numerous briefs *amicus curiae* in the Court and in the federal circuit courts of appeals to advance the opportunities of protected individuals in employment.

The National Employment Law Project ("NELP") is a non-profit legal organization with over 40 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP's areas of expertise include the workplace rights of low-wage workers under federal employment and labor laws, with a

special emphasis on wage and hour rights. NELP has litigated and participated as *amicus* in numerous cases addressing the rights of workers under the Fair Labor Standards Act and related state fair pay laws. This work has given us the opportunity to learn up close about job conditions around the country in garment, agricultural, construction and day labor, janitorial, retail, hospitality, domestic and home health care, poultry and meat-packing, high-tech, delivery, and other services. The low-wage workers in these and other industries face severe barriers to enforcing their rights to fair pay, making collective and class action mechanisms important to uphold the wage floor. A decision of this Court in favor of AT&T will directly undermine NELP's and our constituents' goals of securing fair-pay for all workers.

The National Women's Law Center ("NWLC") is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights. Since 1972, NWLC has worked to secure equal opportunity for women in the workplace. This includes not only the right to a workplace that is free from all forms of discrimination and exploitation, but also access to effective means of enforcing that right and remedying discrimination and exploitation. NWLC has prepared or participated in the preparation of numerous *amicus* briefs in cases involving sex discrimination in employment before the Court.

SUMMARY OF ARGUMENT

Class actions play a vital role in vindicating not just the rights of consumers like the Respondents in this case, but also the rights of workers. Class actions protect employees from the threat of retaliation, provide an incentive to employees and to private attorneys to prosecute small claims that would not be brought individually, and increase awareness of workplace violations. Additionally, class actions provide systemic relief, produce systemic change, and deter employers from violating the law. Due to the fundamental importance of class actions for workers whose employment rights have been violated, states play a critical role in policing whether contractual class action waivers run afoul of generally applicable contract law principles.

The FAA does not preclude courts from striking down particular class action bans as unconscionable because the FAA does not preempt generally applicable state law principles of contract interpretation. Along with other states, California evaluates class action waivers – whether they appear in arbitration agreements or any other agreement – on a case-by-case basis. These states, applying general principles of contract law, have held that a class action waiver may be unconscionable under certain narrow circumstances, including where class litigation is essential to the vindication of important statutory rights.

ARGUMENT

This case presents the important question of whether states retain authority to apply general principles of contract interpretation to class action waivers found in arbitration agreements. In *amici*'s experience, the use of such waivers is becoming increasingly common in the labor and employment context,[2] particularly in so-called "take it or leave it" contracts that employees are required to sign in exchange for employment.

As California and many other states have concluded, in certain, limited circumstances, class action waivers can work to exculpate defendants from liability, rendering such waivers unconscionable under states' generally applicable rules of contract law. In the labor and employment context, waivers can represent a serious impediment to the vindication of workplace rights in two important ways. First, they create a practical barrier to the enforcement of rights. Most employees do not pursue claims individually for various reasons. The employees may fear retaliation, they may not be able to find counsel willing to pursue relatively small claims on an individual basis, or they simply may not know that they have been the victims of illegal conduct. Second, because so few employees are willing or able to pursue their claims individually, class action waivers threaten our

---

[2] *See* Samuel Estreicher & Steven C. Bennett, "*Using Express No-Class Action Provisions to Halt Class-Claims,"* N.Y.L.J., June 10, 2005 ("[M]any employers have begun incorporating explicit 'no-class action' clauses into their employment alternative dispute resolution (ADR) programs").

nation's ability to protect important rights in the workplace, including the right to equal employment opportunity and payment of the minimum wage and overtime.

I. Class Actions Are Critical to Enabling Employees to Vindicate their Statutorily Protected Rights Because Employees Face Real Obstacles to Bringing Individual Claims.

Throughout the United States, workers are routinely denied their most basic rights in the workplace. *See* Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* 9 (2009), *available at* http://www.unprotectedworkers.org/index.php/broken_laws /index (last visited Oct. 4, 2010). Violations of federal and state wage and hour laws are especially rampant. A national survey of low-wage workers in the three largest U.S. cities recently found that twenty-six percent of workers were paid less than the minimum wage and more than seventy-five percent were owed overtime pay that they were not paid in the previous week. *Id.* at 21-22, 33. These workers lost – and their employers illegally gained – an average of $56.4 million dollars per week. *Id.* at 50. When employers violate the law, the communities in which their employees live also suffer because employees have less money to inject into the local economy.[3] Governments also

[3] *See* Nat'l Emp't Law Project, *Just Pay: Improving Wage and Hour Enforcement at the United States Department of Labor* 5, 7 (2010), *available at* http://www.nelp.org/page/-/Justice/2010/JustPayReport2010.pdf?nocdn=1 (last visited Oct. 4, 2010);

lose out on billions of dollars in payroll and tax revenues.[4]

While these violations impact all segments of society, they overwhelmingly affect low-wage workers who cannot safeguard their fundamental wage and hour, civil rights, and other statutory rights in the workplace without the availability of class actions.

Class litigation, with its potential for meaningful monetary and injunctive relief and its resolution through public, non-confidential settlement agreements or judgments, provides a powerful incentive to employers to choose compliance as the most cost-effective strategy.

Bernhardt, *supra*, at 5.

[4] *See, e.g.*, Fiscal Policy Inst., *New York State Workers Compensation: How Big is the Shortfall?* 8-15 (2007), *available at* http://www.faircontracting.org/PDFs/prevailing_wage/FPI_WorkersCompShortfall_WithAddendum.pdf (last visited Oct. 4, 2010); Peter S. Fisher et al., Iowa Policy Project, *Nonstandard Jobs, Substandard Benefits*, 13-14 (2005), *available at* http://www.cfcw.org/Nonstandard.pdf (last visited Oct. 4, 2010); François Carré & Randall Wilson, Construction Policy Research Ctr., *The Social and Economic Costs of Employee Misclassification in Construction* 14-16 (2004), *available at* http://www.law.harvard.edu/programs/lwp/Misclassification%20Report%20Mass.pdf (last visited Oct. 4, 2010).

A. Class Actions Remove Important Practical Barriers to Justice that Employees Face.

1. Class actions protect employees from the threat of retaliation.

Across job markets and especially in difficult economic times, the threat of reprisal is a significant impediment that prevents employees from pursuing claims against their employers.[5] Current employees who challenge the legality of their employers' policies face the real prospect of being fired from their jobs.[6] Even when they are not fired, workers

---

[5] *See* Andrew C. Brunsden, *Hybrid Class Actions, Dual Certification, and Wage Law Enforcement in the Federal Courts;* 29 Berkeley J. Emp. & Lab. L. 269, 296-97 (2008) ("Workers do not pursue rights claims in a vacuum; there are risks to participating in rights enforcement because one must decide whether to challenge employer practices from within the employment relationship."); Steven G. Zieff, *Advanced Issues in Collective Actions*, 10 Emp. Rts. & Emp. Pol'y J. 435, 437 (2006); David Weil & Amanda Pyles, *Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace*, 27 Comp. Lab. L. & Pol'y J. 59, 83 (2005) (referring to studies suggesting that "despite explicit retaliation protections under various labor laws, being fired is widely perceived to be a consequence of exercising certain workplace rights").

[6] *See, e.g., Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 290 (1960) (plaintiffs were fired after they filed FLSA claims based on employer's "displeasure" over their actions); *Brock v. Casey Truck Sales, Inc.,* 839 F.2d 872, 874 (2d Cir. 1988) (employees were discharged after refusing to take a "loyalty oath" repudiating their rights to unpaid wages); Bernhardt, *supra*, at 3 (forty-three percent of the low wage workers who complained about violations of workplace standards were retaliated against, including by being fired,

face other forms of retaliation, including harassment, less desirable work assignments, and reductions in their hours or pay.[7] Former employees also face enormous challenges finding new employment as a result of industry blacklisting and the refusal of their former employers to provide them with positive job references. *See, e.g., Mori-Noriega v. Antonio's Rest., Inc.*, 923 F.2d 839 (1st Cir. 1990) (unpublished table decision) (plaintiff's current employer fired him because he had cooperated with the Department of Labor in its investigation of his former employer's violation of wage and hour laws). As the Court recognized over thirty years ago, employers, "by virtue of the employment relationship, may exercise intense leverage. Not only can the employer fire the employee, but job

---

suspended, or threatened with cuts in their hours or pay); Deborah L. Brake, *Retaliation*, 90 Minn. L. Rev. 18, 37 (2005) (discussing the high risk of retaliation and the social costs imposed on people who complain about discrimination and how they sharply discourage women from reporting it to authorities or legal institutions); Steven Greenhouse, *Forced to Work Off the Clock, Some Fight Back*, N.Y. TIMES, Nov. 19, 2004, at A1 (quoting a former manager stating that workers who complained of wage and hour violations were "weeded out and terminated").

[7] *See, e.g., Greensboro Prof'l Fire Fighters Ass'n, Local 3157, IAFF v. City of Greensboro,* C-89-245-G, No. 89-245-G, 1991 WL 716736, at *1 (M.D.N.C. Aug. 29, 1991) (plaintiff was not promoted to the position of fire captain in retaliation for having asserted his rights under the FLSA by opting in), *aff'd sub nom. Greensboro Prof'l Fire Fighters Ass'n, Local 3157 v. City of Greensboro*, 64 F.3d 962 (4th Cir. 1995); Bernhardt, *supra*, at 24; Nantiya Ruan, *Bringing Sense to Incentives: An Examination of Incentive Payments to Named Plaintiffs in Employment Discrimination Class Actions,* 10 Employee Rts. & Emp. Pol'y J. 395, 410-11, 423 (2006).

assignments can be switched, hours can be adjusted, wage and salary increases can be held up, and other more subtle forms of influence exerted." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 240 (1978).

Although employees across all industries and income brackets risk retaliation for pursuing claims against their employers, these risks are heightened for low-wage workers, many of whom are immigrants with limited English proficiency and/or with little or no familiarity with their legal rights. These workers are particularly vulnerable to retaliation because of their dependence on each paycheck to make ends meet and their tendency to work in low-skilled jobs where employers consider them easily replaceable and therefore expendable.

Class actions protect employees against retaliation and the fear of retaliation because they allow all but a few class members to pursue their rights without having to step forward and publicly challenge their employer. For this reason, courts have widely recognized the essential role of class actions in the vindication of workers' rights.[8]

---

[8] *See, e.g., Deposit Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999) (it is "reasonably presumed" that potential class members still employed by their employer "might be unwilling to sue individually or join a suit for fear of retaliation at their jobs"); *Smellie v. Mount Sinai Hosp.,* No. 03-0805, 2004 WL 2725124, at *4 (S.D.N.Y. Nov. 29, 2004) (authorizing class action because "class members who still work for [defendant] may be reluctant to serve as named plaintiffs in an action against their employer for fear of reprisals"); *Horn v. Associated Wholesale Grocers*, 555 F.2d 270, 275 (10th Cir. 1977) (holding that district court erred in failing to take judicial notice of the fact that employees are apprehensive

2. Class actions provide an incentive to employees and to attorneys to prosecute small claims.

This Court has held repeatedly that a class action may represent the only means of judicial relief where a plaintiff's claim is too small economically to support individual litigation.[9] Employment claims, especially wage and hour claims, typically involve very small per person damages.[10] Although the

---

about the loss of their jobs, the welfare of their families, and of offending their employer as a result of taking a stand); *Simmons v. City of Kansas City, Kan.*, 129 F.R.D. 178, 180 (D. Kan. 1989) (certifying class of forty-nine current and former African-American police officers alleging discriminatory promotion policy where class certification minimized the likelihood of retaliation against individual members).

[9] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (noting that the policy at the very core of the class action mechanism "is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights") (internal quotation marks omitted); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("Class actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually"); *Deposit Guar. Nat'l Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 339 (1980) ("Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device.")

[10] *See Phelps v. 3PD, Inc.*, 261 F.R.D. 548, 563 (D. Or. 2009) (recognizing the superiority of class actions due to the typically small size of individual awards); *Chase v. AIMCO Properties, L.P.*, 374 F. Supp. 2d 196, 198 (D.D.C. 2005) ("individual wage and hour claims might be too small in dollar terms to support a litigation effort"); *Sav-On Drug Stores, Inc. v. Superior Court*, 96 P.3d 194, 209 (Cal. 2004) (observing, in an overtime action,

rights at issue in these cases are crucial, most workers simply cannot afford the time and expense it would take to prosecute their claims individually. Moreover, for most plaintiffs' attorneys, employment claims are prohibitively expensive to litigate on an individual basis. *See Ansoumana v. Gristede's Operating Corp.*, 201 F.R.D. 81, 85-86 (S.D.N.Y. 2001) (noting that individual suits, as an alternative to class litigation, may not be feasible based on class members' lack of financial resources and disincentives for attorneys); *Scott v. Aetna Servs., Inc.*, 210 F.R.D. 261, 268 (D. Conn. 2002) (concluding that a class action is the superior method for bringing plaintiffs' overtime claims, in part, because "the cost of individual litigation is prohibitive").

Individual litigation requires one plaintiff to shoulder all of the demands of the lawsuit herself, including spending countless hours assisting in the investigation of the claims and bearing the financial and emotional costs of the litigation alone. For low-wage workers, most of whom work long hours and have little or no flexibility to change their schedules, individual litigation is simply out of the question.[11]

---

that "the class suit…provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation") (internal quotation marks omitted). *See also* Catherine K. Ruckelshaus, *Labor's Wage War*, 35 Fordham Urb. L.J. 373, 386 (2008) (discussing factors, including the typically small size of each individual worker's claim, that contribute to workers' lack of access to the courts).

[11] *See Braun v. Wal-Mart Stores, Inc.*, No. 19-CO-01-9790, 2003 WL 22990114, at *12 (D.C. Minn. Nov. 3, 2003) ("[M]embers of the class have little practical ability to prosecute their claims in separate actions, in light of the substantial cost associated with

The class mechanism, on the other hand, limits the extent to which any one class member bears the burden of prosecuting the litigation. In wage and hour class actions, for example, courts routinely grant back wages to class members on the basis of representative evidence of the employer's unlawful conduct.[12] Such proof significantly relieves the pressure on any one class member.

Even if an employee is able to make the time for individual litigation, most employment claims

---

gathering and presenting the evidence . . . . If the class is not certified, individual claimants effectively would be denied any remedy because the expense of prosecuting individual claims likely would vastly exceed the amount in controversy for each claim); *Bell v. Farmers Ins. Exch.*, 9 Cal. Rptr. 3d 544, 570 (Cal. Ct. App. 2004) (noting that the costs of litigation may involve travel expenses and time off from work to pursue the case, and the value of any ultimate recovery may be further reduced by legal expenses). *See also* Ruckelshaus, *supra* note 10, at 387 (noting the impracticability for the vast majority of workers to support an individual action).

[12] *See, e.g.*, *Grochowski v. Phoenix Constr.*, 318 F.3d 80, 88 (2d Cir. 2003) ("the plaintiffs correctly point out that not all employees need testify in order to prove FLSA violations or recoup back-wages"); *Reich v. Gateway Press, Inc.*, 13 F.3d 685, 701 (3d Cir.1994) (twenty-two out of seventy employees testified); *Martin v. Tony & Susan Alamo Found.*, 952 F.2d 1050, 1052 (8th Cir. 1992) (back pay to be awarded "to the nontestifying employees based on the fairly representative testimony of the testifying employees"); *McLaughlin v. Ho Fat Seto*, 850 F.2d 586, 589 (9th Cir.1988) (five out of twenty-eight employees testified); *Donovan v. Simmons Petroleum Corp.*, 725 F.2d 83, 86 (10th Cir. 1983) (testimony of twelve former employees supported award to all former employees); *Donovan v. New Floridian Hotel, Inc.*, 676 F.2d 468, 472 (11th Cir.1982) (twenty-three employees testified to support award to 207 employees).

are prohibitively expensive for plaintiffs' attorneys to prosecute on an individual basis. *See Jarvaise v. Rand Corp.*, 212 F.R.D. 1, 4 (D.D.C. 2002); *Ansoumana*, 201 F.R.D. at 86; Juliet M. Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 Wash. U.J.L. & Pol'y 201, 248-49 (2006) (addressing the "reality that the wage and hour cases of the working poor . . . tend to involve relatively small dollar figures, prohibitively small for a private attorney"). Such claims make far more economic sense to prosecute in the aggregate particularly when they involve a single policy applied to hundreds, if not hundreds of thousands, of workers, resulting in cumulative damages that are significant.[13] When the claims are prosecuted collectively, it becomes economically feasible for attorneys to offer representation on a contingency basis – a necessity for all but the most highly paid workers.[14]

Government agencies charged with enforcing

---

[13] *See Amchem Prods.*, 521 U.S. at 617 (recognizing "the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights" and that "class action[s] solve[] this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor") (internal quotation marks omitted). *See also* William B. Rubenstein, Alba Conte, & Herbert B. Newberg, *Newberg on Class Actions* § 24:64 (4th ed. 2010) (noting that class actions tend to produce much larger fee awards for attorneys, in part, because of the potential for creating a substantial common fund and seeking a generous fee from the fund for producing a significant result for the class).

[14] *See, e.g., Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997) (explaining that an attorney would not take a case on contingency with a low potential payout).

the nation's employment laws cannot substitute for private attorneys because these agencies lack the resources to prosecute large numbers of individual cases.[15] For example, the Equal Employment Opportunity Commission received 93,277 charges of discrimination in 2009, but filed only 314 enforcement suits.[16] In 2008 and 2009, the Government Accountability Office, the investigative arm of Congress, found that the U.S. Department of Labor's Wage and Hour Division had delayed investigating hundreds of minimum wage and overtime complaints and had reduced the number of enforcement actions by thirty-seven percent over the previous ten years.[17]

---

[15] Nat'l Emp't Law Project, *supra* note 3, at 15.

[16] Equal Employment Opportunity Commission Charge Statistics FY 1997 Through FY 2009, http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm (last visited Oct. 4, 2010); Equal Employment Opportunity Commission, EEOC Litigation Statistics, FY 1997 Through FY 2009, http://www.eeoc.gov/eeoc/ statistics/enforcement/litigation.cfm (last visited Oct. 4, 2010).

[17] U.S. Gov't Accountability Office, GAO-08-962T, Fair Labor Standards Act: Better Use of Resources Could Improve Compliance 5-6 (2008) (finding that the Wage and Hour Division reduced the number of enforcement actions it pursued annually by more than a third, from 47,000 in 1997 to under 30,000 in 2007, in part, because of a 20 percent decrease in the number of investigators), *available at* http://www.gao.gov/new.items/d08962t.pdf (last visited Oct. 4, 20, 2010); U.S. Gov't Accountability Office, GAO-09-629, Department of Labor: Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft (2009), *available at* http://www.gao.gov/new.items/d09629.pdf (last visited Oct. 4, 2010).

3. Class action notification procedures increase awareness of workplace violations.

Individual employees are often unaware that their rights have been violated. Many workers, especially low-wage and immigrant workers, are unfamiliar with the laws that protect them.[18] Some are misinformed by their employers who claim that the law does not protect them or that they are exempt from the law's overtime and minimum wage protections.[19] Where the violations are hidden, for example, in cases alleging discriminatory pay disparities that rely on statistical proof, even the most sophisticated workers may have no means of determining that they have been the victims of illegal conduct.[20] *See Lilly Ledbetter Fair Pay Act of*

---

[18] *Gentry v. Superior Court*, 165 P.3d 556, 565-67 (Cal. 2007) ("[S]ome individual employees may not sue because they are unaware that their legal rights have been violated"); *c.f. Muhammad v. County Bank of Rehoboth Beach, Del.*, 912 A.2d 88, 100 (N.J. 2006) ("[W]ithout the availability of a class-action mechanism, many consumer-fraud victims may never realize that they may have been wronged").

[19] *Misra v. Decision One Mortg. Co., LLC*, 673 F. Supp. 2d 987, 991 (C.D. Cal. 2008) (defendants misrepresented to employees that they were exempt and not entitled to overtime pay); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D. Pa. 1984) (plaintiffs alleged affirmative misrepresentations by employer which were sufficient to toll the statute of limitations applicable to their claims); *Gentry*, 165 P.3d at 461 ("The likelihood of employee unawareness is even greater when, as alleged in the present case, the employer does not simply fail to pay overtime but affirmatively tells its employees that they are not eligible for overtime.")

[20] *See* Leonard Bierman & Rafael Gely, *"Love, Sex and Politics? Sure. Salary? No Way": Workplace Social Norms and the Law*,

2009, 155 Cong. Rec. S229 (daily ed. Jan. 8, 2009) (statement of Sen. Leahy) (noting that the Act was intended to address "a reality of the workplace – pay discrimination is often intentionally concealed by employers").

Class actions increase awareness of workplace abuses through their notification procedures. Class notice is often the only means by which workers learn of challenges to practices that they suspected were illegal, but lacked the proof to challenge individually.[21] Notice not only informs class members of their rights, it also provides them with an entry point into the legal system by directing them to class counsel and to an existing lawsuit. This aspect of notice, in particular, can be extremely valuable to employees, especially low-wage earners, because it lets them know they are not alone in challenging a policy or practice in their workplace.[22]

---

25 Berkeley J. Emp. & Labor L. 167, 168, 171, 178 (2004) (explaining that one-third of U.S. private sector employers have policies which bar employees from discussing their salaries and that those employees who perceive wage differentials observe them "without the full information necessary to evaluate the justifications for differing wages")

[21] *See Newberg on Class Actions* § 8:4 (notice under "[Federal Civil Procedure] Rule 23(c)(2) is designed to alert the parties to the pendency of a Rule 23(b)(3) class action, for the purpose of allowing the parties to make conscious choices that affect their rights in a litigation context").

[22] *See* Weil & Pyles*, supra* note 5, at 91 (discussing studies showing that workers are more likely to exercise rights where they have an agent that assists them in use of those rights).

B. Class Actions Benefit Employees Overall by Producing Systematic Changes that Individual Cases Cannot Attain.

1. Class actions produce a deterrent effect that individual cases cannot achieve.

Class actions provide an essential counterweight to employers' economic incentive to violate the law in two important ways. First, the scope of class litigation – including the number of workers covered – increases the likelihood that a non-compliant employer will be brought fully into compliance. Second, the capacity of class litigation to obtain significant damages, including attorneys' fees, makes the potential cost of non-compliance greater than the cost of compliance. Because individual litigation typically only provides a remedy to the plaintiff (and not systemic or monetary relief for those similarly situated) and cannot match the aggregate damages of class actions, it simply does not have the deterrent effect of class litigation.

Government enforcement also cannot match the deterrent capacity of class litigation because government agencies rarely seek the full extent of damages afforded by the law and largely seek individual monetary remedies instead of seeking industry-wide or injunctive relief.[23] For example, investigators at the U.S. Department of Labor's Wage and Hour Division are instructed not to

---

[23] *See* Nat'l Emp't Law Project, *supra* note 3, at 9-10.

include the 100% liquidated damages permitted by the law in their negotiations with employers and to seek backpay for just two years of the potential three year statute of limitations period.[24] Under these circumstances, employers can reasonably assume that, if they are caught, the only cost they will incur for breaking the law is to pay the wages they would have owed from the outset. In addition, because most government investigations are claims-driven, investigators are not required to expand their investigations to include a claimant's similarly situated co-workers or seek relief for them even when it is obvious that the employer applied the same unlawful policy to many workers.[25] As a result, governmental enforcement efforts can be narrow, limited, and piecemeal.

2. Class actions enable employees to obtain injunctive relief that is not available to individual litigants.

The Supreme Court has long recognized that "suits alleging racial or ethnic discrimination are often by their very nature class suits, involving classwide wrongs." *E. Tex. Motor Freight Motor Sys., Inc. v. Rodriguez*, 431 U.S. 395, 405 (1977). To correct such wrongs, employees must be able to demand broad, systemic changes to their employer's policies and practices in the form of injunctive relief. *See, e.g., Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1152 (11th Cir. 1983) ("Title VII and the class action

---

[24] *Id.* at 10.

[25] *See id.*

rule should be construed so as to further the strong public policy of eradicating all vestiges of […] discrimination in employment.") Injunctive relief obtained from class actions has produced tremendous change in the American workplace.[26]

The drafters of Rule 23 of the Federal Rules of Civil Procedure had precisely this goal in mind when they proposed Section (b)(2) in 1966. That Section authorizes class certification where an employer "has acted or refused to act on grounds generally applicable to the class." Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) was born out of a recognition that individual lawsuits cannot readily achieve the sort of sweeping results that are necessary to combat discrimination. *See* Fed. R. Civ. P. 23 Advisory Committee's Notes, 1966 Amends., Subdiv. (b)(2) ("actions in the civil-rights field where a party is charged with discriminating unlawfully against a

---

[26] *See, e.g., Freeman v. City of Philadelphia*, 751 F. Supp. 509 (E.D. Pa. 1990) (increasing the number of African-American police officers in Philadelphia's police force from 12% to 35%); Public Interest Law Center of Philadelphia, *Law Center Joins Forces with Other Civil Rights Organizations to Protect Ability to Combat Discrimination With Class Action Lawsuits* (Oct. 31, 2007), http://www.pilcop.org/ed.html (last visited Oct. 4, 2010) (noting the increase in the number of African-Americans in Philadelphia's police force as a result of the consent decree); *Butler v. Home Depot*, C-94-4335, 1997 WL 605764 (N.D. Cal. 1997) (more than doubling the representation of women in management-track positions at Home Depot, one of the nation's largest retail chains); *Home Depot, Female Employees Report Progress* (June 24, 2002), http://hr.blr.com/HR-news/Discrimination/Sex-Discrimination/Home-Depot-Female-Employees-Report-Progress/ (reporting the increase in the number of women in management-track jobs at Home Depot) (last visited Oct. 4, 2010).

class" are a type of action appropriately maintained under Rule 23); *Amchem Prods.*, 521 U.S. at 614; Benjamin Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I),* 81 Harv. L. Rev. 356, 389 (1967). Building on experience in civil rights litigation, the drafters acknowledged that individual lawsuits had been "inadequate" to meet the challenges posed by institutional discrimination and, in any case, were an "inefficient" means to do so. Kaplan, *supra*, at 389 (noting that Rule 23(b)(2) was "built[] on experience mainly, but not exclusively, in the civil rights field").

Injunctive relief is not readily available to individual litigants because it is often impossible for them to muster the evidence to prove a widespread pattern of discrimination.[27] Even when the evidence reflects a discriminatory policy that affected other workers, some courts have held that broad injunctive relief is prohibited when it is deemed to exceed what is necessary to give individual relief to the plaintiff.[28]

---

[27] *See infra* Part I.B.3.

[28] *See, e.g., Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (noting the general "rule that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs" and declining to apply it to the class action before it); *Sharpe v. Cureton*, 319 F.3d 259, 273 (6th Cir. 2003) ("While district courts are not categorically prohibited from granting injunctive relief benefiting an entire class in an *individual suit*, such broad relief is rarely justified . . . ."); *Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742, 766-67 (4th Cir. 1998), *vacated and remanded on other grounds*, 527 U.S. 1031 (1999), *reaff'd, Lowery v. Circuit City Stores, Inc.*, 206 F.3d 431, 437 (4th Cir. 2000), *cert. denied*, 531 U.S. 822 (2000); *Butler v. Dowd*, 979 F.2d 661, 674 (8th Cir. 1992), *cert.*

Thus, for example, if the named plaintiff has left her job with the employer and does not intend to return, no injunctive relief will be available. In the absence of class actions, these limitations on the availability of injunctive relief in individual suits will have a profound effect on the capacity of civil rights laws to eradicate discrimination.

3. Class actions expose institutional violations that may stay hidden in individual cases.

Employment discrimination cases often involve challenges to widespread policies, patterns, or practices that produce discriminatory effects when applied to hundreds or thousands of workers. From the perspective of an individual employee, however, it can be impossible to identify, let alone prove, a pattern of systemic discrimination. To do so, employees require proof on a scale that will permit an allegedly unlawful pattern, if one exists, to emerge. *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339-40 n.20 (1977) ("Since the passage of the Civil Rights Act of 1964, the courts have frequently relied upon statistical evidence to prove a violation . . . . In many cases the only available avenue of proof is the use of . . . statistics to uncover clandestine and covert discrimination by the employer or union involved.")

---

denied, 508 U.S. 930 (1993); *Ameron, Inc., v. U.S. Army Corps of Eng'rs*, 787 F.2d 875, 888 (3d Cir. 1986), *approved on reh'g*, 809 F.2d 979, 982 n.1 (3d Cir. 1986), *cert. dismissed*, 488 U.S. 918 (1998); *Hollon v. Mathis Indep. Sch. Dist.*, 491 F.2d 92, 93 (5th Cir. 1974) (per curium).

In class actions, plaintiffs typically rely on statistical analyses of companywide data to establish a discriminatory pattern or practice. *Id.*; *Hazelwood Sch. Dist. v. United States*, 431 U.S. 299, 307-308 (1977) (noting that "statistics can be an important source of proof in employment discrimination cases"); *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 160 (2d Cir. 2001) ("[S]tatistical proof almost always occupies center stage in a prima facie showing of a disparate impact claim.") Once a pattern is established, it creates a rebuttable presumption that each class member was a victim of the discrimination and shifts the burden to the defendants to show otherwise. *See Cooper v. Fed. Reserve Bank of Richmond*, 467 U.S. 867, 875-76 (1984); *Teamsters*, 431 U.S. at 361-62. The quantum of evidence available to class action plaintiffs is often unavailable to individual litigants, however, because such litigants may not be afforded the broad discovery rights permitted in class action cases. *See Newberg on Class Actions* § 5:12 ("Whether a class action is brought for injunctive relief, damages, or both, the use of the class device, in contrast to the individual action, provides the plaintiff with a broader base for pretrial discovery and presents the court with a more complete record on which to reach its liability determinations."), § 24:62 ("The broader discovery rights of the class action device are useful in the employment context when seeking to establish wide-scale discriminatory practices by providing a more complete record on which to reach determinations on either injunctive relief or liability.") Because of these limits, employees who are required to litigate their claims individually will be at a severe disadvantage and very likely unable to

muster the evidence required to establish a pattern of discrimination or benefit from the presumption that flows from it.

II. Applying General Contract Law Principles, States Have Adopted Standards that Balance Freedom of Contract with Protection of Important Statutory Rights in the Workplace.

Petitioner falsely suggests that California has adopted a "near-categorical ban on arbitration agreements that do not allow for class-wide dispute resolution." Pet. Br. 15. On the contrary, California's prohibition of class action waivers in contracts is limited to a narrow set of circumstances and does not disfavor arbitration agreements in particular. California's class action waiver analysis, like that of many other states, is nuanced. The analysis turns on the practical implications of the waiver in question, as understood in the context and circumstances of the particular case. Accordingly, in California and in other states, class action waivers have been upheld in some cases and invalidated in others, under generally applicable principles of state contract law.

A. The Interpretation of an Arbitration Agreement Is Generally a Matter of State Law; the FAA Does Not Preempt a State's Interpretation of Generally Applicable Contract Law.

As the Supreme Court recently noted in *Stolt-Nielsen S.A., et al. v. AnimalFeeds International Corp.*, "the interpretation of an arbitration

agreement is generally a matter of state law." 130 S. Ct. 1758, 1773 (2010). The Court went on to state that "the FAA imposes certain rules of fundamental importance, including the basic precept that arbitration 'is a matter of consent, not coercion.'" *Id.* (quoting *Volt Info. Sciences, Inc.* v. *Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)).

The FAA does not preempt generally applicable principles of state contract law. The FAA provides that a contractual arbitration provision "shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract*," 9 U.S.C. § 2 (emphasis added). Section 2 of the FAA has been interpreted to mean that generally applicable state contract law defenses like unconscionability, fraud, forgery, duress, mistake, or lack of consideration or mutual obligation can invalidate arbitration agreements. *Cooper v. MRM Investment Co.,* 367 F.3d 493, 498 (6th Cir. 2004). Thus, state contract law principles can invalidate an unconscionable arbitration provision "without contravening § 2 of the FAA." *Shroyer v. New Cingular Wireless Servs., Inc.,* 498 F.3d 976, 988 (9th Cir. 2007) (internal quotation marks omitted).

B. California Law Reflects a Straightforward Application of General Principles of Contract Interpretation.

Under California law, courts "may refuse to enforce" any contract found "to have been unconscionable at the time it was made," or sever or

"limit the application of any unconscionable clause" in order to "avoid any unconscionable result." Cal. Civ. Code § 1670.5(a). In *Discover Bank v. Superior Court,* the California Supreme Court adopted a nuanced rule to evaluate, on a case-by-case basis, whether a particular class action ban is unconscionable. 113 P.3d 1100, 1110 (Cal. 2005). Under *Discover Bank*, a class action ban is unconscionable if it is found in a contract of adhesion, if the disputes for which it bans class treatment generally involve small amounts of damages, and if the party with the superior bargaining power allegedly has carried out a scheme to deliberately cheat large numbers of individuals out of individually small sums of money. *Id.*

Contrary to Petitioner's assertion, *Discover Bank* did not establish a blanket ban on class action waivers in arbitration agreements. For example, a California appellate court recently upheld a class action ban after determining that state law on unconscionability "as it applie[d] to the specific circumstances of [the] case," did not render the particular ban unenforceable. *Arguelles-Romero v. Super. Ct.*, 109 Cal. Rptr. 3d 289, 304 (Cal. Ct. App. 2010).

As noted in *Discover Bank,* courts should consider the intent underlying the adoption of the class waiver in question. Numerous corporate representatives have urged their clients to adopt and enforce class action bans precisely because putative class members may never bring individual claims, thereby dramatically reducing their clients'

exposure.[29] Provisions that are intended to operate as exculpatory clauses are rendered unconscionable and unenforceable under general principles of state contract law.

In cases challenging class action bans in employment agreements, the California Supreme Court refined the nuanced rule established in *Discover Bank.* In *Gentry v. Superior Court,* the California Supreme Court set out factors to be considered in determining whether a class action waiver in an employment agreement is enforceable. 165 P.3d 556, 568 (2007). The case involved claims that Circuit City Stores illegally failed to pay overtime to hundreds of employees. Following *Discover Bank*, *Gentry* emphasized the case-by-case inquiry that courts must undertake when evaluating the enforceability of class action waivers. *Id.* The court expressly declined to hold that all provisions that prohibit employees from bringing overtime

---

[29] *See, e.g.,* Myriam Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 Mich. L. Rev. 373, 396 & n.121-123, 419 (2005) ("Aggressive employers such as Circuit City have already used collective action waivers to avoid classwide exposure in the employment context."); Jean R. Sternlight, *As Mandatory Binding Arbitration Meets the Class Action, Will the Class Action Survive?*, 42 Wm. & Mary L. Rev. 1, 13-17 & n.2 (2000) (potential defendants know that because many claims are not viable if brought individually, plaintiffs will often drop or fail to initiate claims once it is clear that class relief is unavailable); David S. Schwartz, *Understanding Remedy-Stripping Arbitration Clauses: Validity, Arbitrability, and Preclusion Principles*, 38 U.S.F. L. Rev. 49, 59-60 & n.47 (2004) (barring class actions can operate as an exculpatory clause; no doubt such is the intent of the drafters of class action bans).

cases on a class basis are unenforceable. *Id.* at 567-68.

Gentry applied a multi-factor test that was narrowly tailored to the special circumstances of the case and intended to assess the extent to which the availability of class treatment was essential to the vindication of the rights at issue. The factors included: whether class arbitration would be more effective than individual arbitration in vindicating the employee rights at issue, whether individual recovery amounts sufficiently incentivized individuals to file suit, the risk of retaliation to employees, and the likelihood that employees would be unaware of the alleged illegal conduct absent a class action. *Id.* at 568.

Applying these factors, the court concluded that they all weighed against enforcement of Circuit City's class action ban. The court noted the important function that "class actions play . . . in enforcing overtime laws," because they are more efficient and less expensive than individual cases and thus increased the odds that overtime suits would be brought, they protect employees against the risk of retaliation by allowing a few employees to stand up for many, and serve to inform employees who are unaware of their legal rights that their rights may have been violated. *Id.* at 564-68.

California courts have applied *Gentry* in employment cases involving similar factual circumstances. For example, a state appellate court recently held that a class action waiver was unenforceable where a group of truck drivers had

alleged that their employer had denied them meal and rest breaks and overtime under state labor laws. *Franco v. Athens Disposal Co., Inc.,* 90 Cal. Rptr. 3d 539 (Cal. Ct. App. 2009), *reh'g denied* (Apr. 1, 2009), *as modified* (Mar. 18, 2009), *review denied* (June 17, 2009), *cert. denied*, 130 S. Ct. 1050 (2010). The court found that enforcement of the class waiver effectively would have prevented the plaintiffs from obtaining qualified counsel because the potential damages were modest, would have increased the potential for retaliation against employees that chose to proceed individually, and would have prevented many similarly situated employees from knowing that their rights had also been violated. *Id.* at 542, 551-55.

Similarly, a California appellate court refused to enforce an employment arbitration agreement that required individual rather than class arbitration in *Sanchez v. Western Pizza Enters., Inc.*, 90 Cal. Rptr. 3d 818 (Cal. Ct. App. 2009). The case involved allegations that a restaurant paid its delivery drivers 80 cents per delivery in violation of minimum wage laws. *Id.* at 824. The court declined to enforce the class action waiver provision for a number of reasons, including the fact that the amounts at issue were small, the plaintiffs were low-wage earners, the potential for retaliation was significant, and the plaintiffs were mostly immigrants with limited English skills, likely to be unaware of their legal rights. *Id.* at 832.

C. Other States Also Have Adopted Nuanced Approaches to Evaluating the Enforceability of Class Action Waivers.

In addition to California, many other states have applied their generally applicable contract law principles to invalidate class action waivers in certain employment agreements and in other narrow contexts. *See* Respondents' Br. 17-24. For example, in an overtime case filed under the FLSA, the First Circuit held that a class action waiver found in an employment agreement was unconscionable under Massachusetts contract law. *Skirchak v. Dynamics Research Corp*, 508 F.3d 49, 58-59 (1st Cir. 2007).

Similarly, in *Walker v. Ryan's Family Steak Houses, Inc.*, a case alleging minimum wage and overtime violations under the Fair Labor Standards Act, the Sixth Circuit affirmed the district court's decision that a class action waiver was unenforceable. 400 F.3d 370 (6th Cir. 2005). The trial court considered that many of the employees had limited education and were in serious financial need. 289 F. Supp. 2d 916, 933 (M.D. Tenn. 2003). The court also noted:

> The unavailability of class arbitration . . . burdens employees and benefits employers. Employees must shoulder the fees of individual arbitration themselves and must summon the wherewithal to pursue individual claims that might be common to other employees; this disincentive might result in fewer claims, to the benefit of

> employers. Moreover, in the Fair Labor Standards Act area particularly, often each individual claim results in a small monetary remedy, whereas class actions often result in practice and programmatic change that benefit all employees.

Id. at 926. *See also Al-Safin v. Circuit City Stores, Inc.,* 394 F.3d 1254, 1262 (9th Cir. 2005) (holding that "Circuit City's arbitration agreement requires employees to forgo essential substantive and procedural rights and that the clauses regarding . . . class actions [among others], render the arbitration agreement excessively one-sided and unconscionable").

The arbitral forum must provide litigants with an effective substitute for the courtroom. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28 (1991) (the "prospective litigant" must be able to "effectively . . . vindicate [his or her] statutory cause of action in the arbitral forum") (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 (1985)). Particularly in the context of employment disputes, class treatment can be essential to the effective vindication of certain types of claims. Generally applicable principles of state contract law protect workers from unconscionable provisions that are intended as exculpatory clauses that deter individuals from vindicating their rights. The FAA does not preempt states from evaluating the enforceability of class action waivers under these principles of state contract law.

CONCLUSION

For the above reasons, the *amici* respectfully request that the judgment of the Ninth Circuit be AFFIRMED.

Respectfully submitted,

SARAH CRAWFORD
Counsel of Record
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Ave.
Suite 400
Washington, DC 20016
(202) 662-8600

ADAM T. KLEIN
RACHEL BIEN
NANTIYA RUAN
JENNIFER LIU
OUTTEN & GOLDEN LLP
3 Park Avenue
29th Floor
New York, NY 10016
(212) 245-1000

TERISA E. CHAW
EMPLOYEE RIGHTS ADVOCACY INSTITUTE FOR LAW & POLICY
44 Montgomery Street
Suite 2080
San Francisco, CA
94104

REBECCA HAMBURG
NATIONAL EMPLOYMENT LAWYERS ASSOCIATION
44 Montgomery Street
Suite 2080
San Francisco, CA
94104

CATHERINE RUCKELSHAUS
NATIONAL EMPLOYMENT LAW PROJECT
75 Maiden Lane, Suite 601
New York, NY 10038

SHARYN A. TEJANI
NATIONAL PARTNERSHIP FOR
WOMEN & FAMILIES
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

EMILY J. MARTIN
NATIONAL WOMEN'S LAW CENTER
11 Dupont Circle, NW
Suite 800
Washington, DC 20036