No. 12-1226

IN THE
Supreme Court of the United States

PEGGY YOUNG

Petitioner,

v.

UNITED PARCEL SERVICE, INC.

Respondent.

On Writ Of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The undersigned *amici* are Members of the U.S. House of Representatives and U.S. Senate, some of whom were members of the 95th Congress, which passed the Pregnancy Discrimination Act ("PDA"),[2] and all of whom share an interest in ensuring that the PDA is accurately interpreted and applied, consistent with its text and Congressional intent. *Amici* urge the reversal of the Fourth Circuit decision below, which they believe misinterprets the PDA and this Court's precedent, and in so doing improperly narrows the protections they or their predecessors intended to guarantee to pregnant workers. Some *amici* are also co-sponsors of a pending bill, the Pregnant Workers Fairness Act ("PWFA"),[3] who wish to present to the Court their intention in proposing the PWFA and the relationship between current law and the PWFA.

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[1] Pursuant to Rule 37.2(a), the parties have consented to the filing of this brief, and their letters of consent have been filed with the Clerk. No party authored this brief in whole or in part, and no person or entity, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

[2] A complete list of *amici* is provided at Appendix A of this brief. The *amici* who were members of the 95th Congress are Sen. Barbara A. Mikulski, Sen. Edward J. Markey, Sen. Tom Harkin, Sen. Patrick Leahy, Rep. John Conyers, Jr., Rep. Henry A. Waxman, Rep. Richard M. Nolan and Rep. Charles B. Rangel.

[3] *Amici* who are co-sponsors of the PWFA are indicated in Appendix A by an asterisk next to their names.

SUMMARY OF ARGUMENT

Congress passed the Pregnancy Discrimination Act ("PDA") in direct response to this Court's decision in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), *superseded by statute Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669 (1983), which held that Title VII, as then drafted, did not prohibit an employer from excluding women with disabilities arising from pregnancy and childbirth from a disability plan covering sickness and injury, unless the plaintiff could show the distinction based on pregnancy was a pretext to discriminate on the basis of sex. Because Congress believed that this interpretation of Title VII was erroneous and contrary to the intention of the drafters, it enacted the PDA, expressly providing that the terms "because of sex" or "on the basis of sex" found in Title VII include "because of or on the basis of pregnancy, childbirth, and related medical conditions." 42 U.S.C. § 2000e(k). In doing so, Congress ensured that distinctions based on pregnancy and related conditions would be considered discrimination on the basis of sex under Title VII.

However, the PDA did more than this. In passing the PDA, Congress also developed and enacted the controlling standard employers must use in determining whether a pregnant worker is to be provided a benefit afforded another worker. Specifically, employers are only to consider whether the pregnant worker's "ability or inability to work," is similar to that of the worker receiving the benefit.

Id. If so, the pregnant worker must receive the same "treat[ment]." *Id.*

In the decision below, the Fourth Circuit ignored this explicit statutory mandate by holding that Peggy Young, a UPS driver who requested light duty because of limitations arising from her pregnancy, was not entitled to that accommodation, despite the fact that workers who had other disabilities, injuries, and physical conditions that similarly affected their ability to work received light duty. The Court justified its decision by placing dispositive emphasis on the source or legal categorization of an employee's inability to work in assessing entitlement to benefits (e.g., whether the inability resulted from an on-the-job injury, a disability under the ADA, or the loss of a commercial driver's license). To reach this result, the Fourth Circuit ignored the unambiguous mandate of the PDA requiring employers to consider only the ability or inability to work in determining a pregnant worker's entitlement to benefits, and considered additional factors not permitted by the PDA. In so doing, it judicially erased the protection Congress intended to provide by enacting the "ability or inability to work" standard. Once employers are permitted to narrow the class of potential comparators by considering the source or legal categorization of the inability to work, they will be able to justify denying pregnant workers benefits available to others.

The legislative history of the PDA clearly reflects Congress's intention to protect pregnant

workers by defining the sole factor employers may use to distinguish between pregnant workers and others in deciding whether to extend benefits in employment: the ability or inability to work.

Congress not only overturned the holding of *Gilbert,* it rejected the attitude toward pregnant women reflected in the decision. It recognized that hostility toward pregnant workers was a primary driver of sex discrimination in the workplace, and that, in order to ensure that pregnant women were no longer treated as second-class citizens on the job, employers must treat them as well as they treated other workers whose ability to do their job was affected by injury, disability, or disease. The concerns of the PDA's drafters regarding the discrimination experienced by pregnant workers and mothers based on stereotypes about the incompatibility of motherhood and work unfortunately remain compelling today.

As drafters and co-sponsors of the Pregnant Workers Fairness Act ("PWFA"), which seeks to reaffirm the PDA's strong protections against this discrimination, *amici* believe the PDA must be interpreted as it was drafted, and as it was intended to be applied. Further, *amici* submit this brief to make clear that nothing in the PWFA or the fact it has been proposed implies that the Fourth Circuit decision is anything other than an inappropriate judicial rewriting of unambiguous statutory language. *Amici* urge the Court to respect the language adopted by Congress in the PDA and overturn the Fourth Circuit's decision below.

ARGUMENT

I. The Plain Language of the PDA Contains Two Distinct Provisions—Each of Which Must Be Given Meaning.

In affirming the grant of summary judgment to UPS, the Fourth Circuit offered no alternative interpretation of the meaning of the dispositive statutory language requiring employers to treat pregnant workers the same as other employees "similar in their ability or inability to work." Indeed, the Court expressly acknowledged that "[s]tanding alone," this language is "unambiguous." Pet. App. 20a. Yet, the Fourth Circuit concluded that based on its "placement . . . in the definitional section of Title VII, and grounded within the confines of sex discrimination under sec. 703," this provision did not meaningfully alter the analysis to be applied in pregnancy discrimination claims. *Id.* at 20a-21a. Based on these considerations rather than the concededly unambiguous statutory language itself, the Court mistakenly concluded that employers can deny pregnant workers employment-related benefits available to other employees similar in their ability to work. *Id.* As such, the decision ignores basic tenets of statutory construction, constitutes legal error, and must be set aside.

A. Congress Adopted the PDA to Override the Supreme Court's Misreading of Title VII in *General Electric Co. v. Gilbert.*

In 1964, Congress passed the Civil Rights Act, which prohibited, among other things, discrimination in employment "because of" or "on the basis of" an employee's sex. In *Gilbert*, this Court held that Title VII's prohibition of discrimination on the basis of sex did not prevent an employer from excluding women with disabilities arising out of pregnancy or childbirth from access to benefits available to workers with disabilities arising out of sickness or accidents, absent a showing that "'distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other.'" 429 U.S. at 135 (quoting *Geduldig v. Aiello*, 417 U.S. 484, 496-97 (1974)); *id.* at 145-46.

This decision, permitting employers to discriminate in the benefits or terms of employment afforded pregnant workers, was premised on the Court's belief that such discrimination did not violate Title VII because it was based on the unprotected condition of pregnancy, rather than on the protected category of "sex." In so holding, this Court endorsed the view that workers disabled by pregnancy could be treated differently—indeed, worse—than workers disabled by sickness or injury, unless the pregnant worker could demonstrate that the difference in treatment was motivated by a general animus toward women.

This Court's reasoning was premised on its perception that pregnancy was not "comparable in all other respects to covered diseases or disabilities" because "it is not a 'disease' at all, and is often a voluntarily undertaken and desired condition." *Id.* at 136. The Court's explicit conclusion that pregnancy is not directly comparable to other conditions, and the attitude animating that conclusion, led Congress to adopt the "ability or inability to work" standard that is set out in the second clause of the PDA. This standard determines what constitutes discrimination on the basis of pregnancy. *See, e.g.*, *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 285 (1987) ("[T]he second clause was intended to overrule the holding in *Gilbert* and to illustrate how discrimination against pregnancy is to be remedied.").

B. The Plain Language of the PDA Reflects Congress's Intent to Reject the Result and Reasoning in *Gilbert*.

Under long established precedent, the first step in determining the meaning of relevant statutory language is to carefully review the plain language of the statute itself. "[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others . . . [:] a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citations omitted). This doctrine is grounded in the concept of comity among the three "coequal" branches of government: "[w]here the language of a statute is

clear in its application, the normal rule is that we are bound by it." *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 470 (1989) (Kennedy, J., concurring). This rule "demonstrates a respect for the coequal Legislative Branch. . . ." *Id.*

The starting point for evaluating the meaning of the PDA is to consider the applicable language in its entirety. The first sentence of the PDA is comprised of two main clauses[4]:

> [Clause 1:] The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; [Clause 2:] **and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise**.

42 U.S.C. § 2000e(k) (amending Section 701 of the Civil Rights Act of 1964) (emphasis added).

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[4] The second sentence addresses employer funding for abortion benefits, and is not relevant to the statutory analysis provided here.

1. Congress's first manifest purpose in passing the PDA was to confirm that pregnancy and related conditions were included within the terms "because of sex" and "on the basis of sex."

The first clause of the PDA clarifies that Title VII's prohibitions on discrimination "because of sex" or on the "basis of sex" apply to discrimination "because of" or "on the basis of" pregnancy, childbirth, and related medical conditions. Accordingly, women are entitled to protection from pregnancy-based "classifications in terms and conditions of employment, in hiring and discharging decisions, and in other employment decisions that adversely affect an employee's status." *Int'l Union, UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 197 (1991) (citing Section 703(a) of the Civil Rights Act of 1964, 78 Stat. 255, as amended, 42 U.S.C. § 2000e-2(a)). The first clause directly overruled the holding in *Gilbert* that discrimination on the basis of pregnancy is not discrimination on the basis of "sex" in part because pregnancy is a condition affecting some, but not all, women. 429 U.S. at 135, 145-46. This clause of the PDA affirmed prior Equal Employment Opportunity Commission ("EEOC") guidance stating that sex discrimination included pregnancy discrimination. *See Discrimination on the Basis of Pregnancy, 1977: Hearings on S. 995 Before the Subcomm. on Labor of the S. Comm. on Human Res.*, 95th Cong. 26 (1977) (statement of Sen. Kennedy) ("The Court's opinion [in *Gilbert*] . . .

disregarded the 1972 Equal Employment Opportunity Commission guidelines that required pregnancy-related disabilities be treated the same as any other temporary disability in the allocation of disability and sick leave benefits.").

2. Congress's second manifest purpose in passing the PDA was to establish the obligation of employers to treat pregnant workers like "other persons" similar in their "ability or inability to work".

The second clause of the PDA expressly sets the legal standard to be applied to ensure fair treatment for pregnant women in the workplace. Employers are to treat pregnant workers, for all employment purposes, as "other persons . . . similar in their ability or inability to work."[5] 42 U.S.C. § 2000e(k). This unambiguous statutory language requires that when employers determine whether a pregnant worker is entitled to a given benefit or type of treatment, they are to consider only one factor: whether "other persons" in the workplace of "similar

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5 This requirement established the minimum benefits to which a pregnant worker is entitled. "Congress intended the PDA to be 'a floor beneath which pregnancy disability benefits may not drop-not a ceiling above which they may not rise.'" *Guerra*, 479 U.S. at 285 (quoting *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 758 F.2d 390, 396 (9th Cir. 1985), *aff'd*, 479 U.S. 272 (1987)).

. . . ability or inability to work" are given the requested benefit or type of treatment. *Id.*

This portion of the PDA was also a direct response to *Gilbert*, which rested on a perception that pregnancy was not directly comparable to the covered diseases and disabilities. The fact that pregnancy is, in some ways, a unique condition (as this Court observed in *Gilbert*) means that employers and courts will often be able to find means to distinguish this condition from other physical conditions such as injury or disease.

To ensure that employers and courts would not deny benefits to pregnant workers by distinguishing the condition of pregnancy from covered disabilities, Congress provided employers with a simple, clear, single-factor standard to measure employers' treatment of pregnant workers. Under that standard, only the ability to work is relevant—not the source of any limitation in that ability, the legal categorization of a disability, or the employer's intent in treating pregnancy differently from other potentially disabling conditions.

This reading of the clear, unambiguous language of the statute has been repeatedly confirmed by this Court. In *Johnson Controls*, this Court recognized that the standard set forth in the second clause provides that "[u]nless pregnant employees differ from others 'in their ability or inability to work,' they must be 'treated the same' as other employees 'for all employment-related purposes.'" 499 U.S. at 204 (quoting 42 U.S.C. §

2000e(k)). With the PDA, "Congress indicated that the employer may take into account only the woman's ability to get her job done." *Id.* at 205-06. This echoes the Court's interpretation of the PDA in *Newport News*, 462 U.S. at 684 & n.24 ("The 1978 Act [PDA] makes clear that it is discriminatory to treat pregnancy-related conditions less favorably than other medical conditions.").

3. The placement of the entirety of the PDA within a section titled "Definitions" does not minimize or alter the import of the plain language of the second clause.

Because the first clause of the PDA clarified the definition of "because of sex" for the purposes of Title VII, the entire PDA was placed in the "Definitions" section of Title VII. The Fourth Circuit's decision below erroneously put dispositive emphasis on the placement of the PDA rather than on the meaning of the language itself, and used that statutory placement as its justification for judicially erasing the second clause from the statute. Pet. App. 20a. However, the placement of the PDA in the definitional section of Title VII does not diminish the substantive impact of the second clause.

As a matter of statutory construction, a heading or title of a section "cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 529 (1947); *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S.

241, 256 (2004) (quoting *Trainmen*); *see also Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (quoting *Trainmen*). Thus, the section's title, "Definitions," cannot annul or modify the clear congressional mandate unambiguously expressed in the second clause of the PDA.

Indeed, this is not the only instance where Congress placed a comprehensive treatment of a substantive right within the Definitions section of Title VII. When Congress amended Title VII to explicitly require employers to accommodate religious exercise, it placed the entire provision within the very same Definitions section of Title VII, at 42 U.S.C. § 2000e(j). This Court has recognized that the religious accommodation requirement imposes substantive obligations, which supplement the nondiscrimination rules applicable to other classes protected under Title VII: it mandated that "an employer, short of 'undue hardship,' [must] make 'reasonable accommodations' to the religious needs of its employees." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 66 (1977) (interpreting the EEOC regulation and recognizing that Congress had since amended the statute to include this language). The religious accommodation provision thus added substantive content, not applicable to the rest of Title VII, uniquely focused on the rights of religious practitioners. Similarly, the PDA's second clause contains substantive content, not applicable to the rest of Title VII, uniquely focused on the rights of pregnant workers.

Neither this Court nor any other court considering the religious accommodation provision in the forty-two years since its enactment has suggested that the location of the provision in the "Definitions" section and its inclusion of a definition of "religion" somehow annulled or modified the substantive meaning reflected in the plain language of the requirement. Rather, courts have specifically noted that the religious accommodation amendment contains a broad definition of religion, an implied substantive duty to accommodate employees' religions, and "an explicit affirmative defense for failure-to-accommodate claims if the accommodation would impose an undue hardship on the employer." *Adeyeye v. Heartland Sweetners, LLC*, 721 F.3d 444, 448 (7th Cir. 2013); *see also Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 63 n.1 (1986) ("The reasonable accommodation duty was incorporated into the statute, somewhat awkwardly, in the definition of religion.").[6]

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[6] *See also Tagore v. United States*, 735 F.3d 324, 329 (5th Cir. 2013) ("Title VII prohibits an employer from discriminating against an employee on the basis of her religion, unless the employer is unable to reasonably accommodate the employee's religious exercise without undue hardship to its business. 42 U.S.C. §§ 2000e–2(a)(1), 2000e(j)."); *Harrell v. Donahue*, 638 F.3d 975, 979 (8th Cir. 2011); *Webb v. City of Phila.*, 562 F.3d 256, 259-60 (3d Cir. 2009); *EEOC v. Firestone Fibers & Textiles Co.*, 515 F.3d 307, 312 (4th Cir. 2008); *Tepper v. Potter*, 505 F.3d 508, 514 (6th Cir. 2007); *Baker v. Home Depot*, 445 F.3d 541, 546 (2d Cir. 2006); *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 602-03 (9th Cir. 2004).

Not long after the religious accommodation provision was codified in the Definitions section of Title VII and interpreted by this Court to set out a distinct substantive standard in addition to a definitional component, Congress similarly placed the entire PDA within the Definitions section of Title VII. The PDA, too, provides a definitional revision as well as a substantive duty (to afford pregnant workers treatment or benefits provided to workers similar in their ability to work).

That the PDA creates substantive duties and affects substantive rights and defenses is further illustrated by the final clause in the second sentence, which states that "nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise." 42 U.S.C. § 2000e(k). Through this language, Congress expressly overrode, as to pregnant workers, a provision of Title VII aligning defenses in cases alleging sex-based discrimination in wages with those available in an Equal Pay Act claim. *See AT&T Corp. v. Hulteen*, 556 U.S. 701, 709 n.3 (2009) ("Congress wanted to ensure that . . . it foreclosed the possibility that this Court's interpretation of the Bennett Amendment [the final sentence of section 703(h)] could be construed, going forward, to permit wage discrimination based on pregnancy."). The impact of this substantive amendment to Title VII is not lessened by its location in the Definitions section.

C. The Fourth Circuit's Decision Rewrote the Standard Mandated by the PDA and Rendered the Second Clause Superfluous, in Violation of This Court's Precedent and the Canons of Statutory Construction.

Despite the plain command of the second clause of the PDA, the Fourth Circuit adopted a reading of the statute that would permit employers to deny pregnant workers workplace benefits that are offered to other workers who are similar in their ability or inability to work. Specifically, the Fourth Circuit permitted UPS to treat Ms. Young less favorably than workers who were receiving light duty based on a similar ability or inability to work, so long as the comparators could be distinguished from Ms. Young on some "pregnancy blind" basis not shown to be motivated by animus against pregnant women. Pet. App. 27a-28a. However, in doing so, the Fourth Circuit judicially re-drafted the PDA to add limitations contrary to the language and underlying purpose of the statute's text. *See id.* 27a-29a.

1. The Fourth Circuit improperly modified the directive of the PDA that employers treat pregnant workers the same as other persons similar in their ability or inability to work.

The PDA's second clause embodies a clear directive: "women affected by pregnancy, childbirth,

or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. § 2000e(k). Thus, the "ability or inability to work" is the sole basis of comparison permitted by Congress. There are no exceptions or limitations to this mandate. Employers are not free to make determinations based on other unlisted factors. If an employer provides a non-pregnant worker a particular benefit or term of employment based on the non-pregnant worker's ability or inability to work, the PDA requires that the pregnant worker with a similar ability or inability to work "shall be treated the same" without distinctions based on the nature of the workers' conditions. *Id.*; *see also Johnson Controls*, 499 U.S. at 204 ("Unless pregnant employees differ from others 'in their ability or inability to work,' they must be 'treated the same' as other employees 'for all employment-related purposes.'" (quoting 42 U.S.C. § 2000e(k)).

The interpretation adopted by the Fourth Circuit, however, perverted the meaning of the second clause of the PDA to focus not on the ability to work, but on the cause or legal categorization of any limitation in ability to work. Pet. App. 27a. By allowing an employer to provide or withhold benefits based on factors other than the ability to work, the Fourth Circuit improperly inserted new language into the statute. *Id.* at 27a-28a.

A court's ability to modify clear statutory language is strictly circumscribed. Courts are "not

free to rewrite the statute that Congress has enacted." *Dodd v. United States*, 545 U.S. 353, 359 (2005); *see also Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002) ("When the words of a statute are unambiguous. . . [w]e will not alter the text."). The sole exceptions to this canon of statutory construction requiring adherence to a statute's plain language occur when application of statutory language would result in patently absurd results or is not parallel to obvious Congressional intent. *See Public Citizen*, 491 U.S. at 454 ("Where the literal reading of a statutory term would compel 'an odd result,' . . . we must search for other evidence of congressional intent to lend the term its proper scope." (internal citation omitted)); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (in "exceptional cases," court will not permit a statutory interpretation "demonstrably at odds with the intentions of its drafters . . ."). The PDA's clear command that a pregnant worker be treated the same as others "similar in ability or inability to work" is a logical and consistent response to the holding in *Gilbert* and a reaffirmation of the guiding principles of Title VII.[7] Indeed, the Fourth Circuit

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[7] Indeed, the suggestion that a standard that has the effect of requiring accommodations for pregnant workers would be absurd flies in the face of the reality that many states have adopted explicit legal requirements of reasonable accommodations for those pregnant workers who need them. *See* Cal. Gov't Code § 12945 (West 2012); S.B. 212, 147th Gen. Assem., Reg. Sess. (Del. 2014); Haw. Code R. § 12-46-107 (1990); 2014 Ill. Legis. Serv. Pub. Act 98-1050 (West) (effective Jan. 1, 2015); Md. Code Ann., State Gov't § 20–609 (West 2013); Minn. Stat. Ann. § 181.9414 (West 2014); N.J. Stat.

never suggested that its rewriting of the statute was based on its conclusion that, without such a judicial amendment, absurd results would ensue. Since the Fourth Circuit's decision breached the foundational canon requiring fidelity to the unambiguous language of a non-absurd statute, the result below should be reversed.

2. The Fourth Circuit's interpretation, which "reconciled" the two clauses by limiting the protections of the PDA to those established in the first clause only, renders the second clause superfluous.

In perhaps the most telling language of its opinion, the Fourth Circuit conceded that, "[s]tanding alone, the second clause's plain language is unambiguous." Pet. App. 20a. That candid admission should end the inquiry. *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U.S. 656, 662-63 (1876) ("[W]here the language of the act is unambiguous and explicit, courts are bound to seek for the intention of the legislature in the words of the act itself, and they are not at liberty to suppose that the legislature intended any thing different from what their language imports."). Instead, the court below attempted to "reconcile" the first and second clause. Pet. App. 20a-21a. Yet, there is no inconsistency between the two clauses

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Ann. § 10:5-12(s) (West 2014); W. Va. Code Ann. § 5-11B-2 (West 2014).

requiring reconciliation. The first clause clarifies that the terms "because of sex" or "on the basis of sex" include pregnancy, childbirth, and related conditions and does so unambiguously. The second clause serves a wholly different purpose: it sets forth a clear, one-factor standard to be applied in evaluating whether pregnant women must receive the same treatment as other workers.

By allowing employers to consider non-statutory factors in deciding the issue, the Court re-wrote the statute in a way that permits results directly prohibited by the unambiguous language of the statute. Under the Fourth Circuit holding, *any* standard adopted by an employer that does not expressly exclude pregnancy in determining when to accommodate limitations in ability to work is permissible, even if that standard has the actual effect of excluding all pregnant workers from benefits available to other workers who have similar physical limitations. In so holding, the Fourth Circuit judicially re-drafted the PDA and stripped its protections down to those provided by the first clause prohibiting discrimination because of pregnancy. The Fourth Circuit's circular reasoning that "Young is not similar to employees injured on the job because, quite simply, her inability to work does not arise from an on-the-job injury," conclusively demonstrates that the Court's interpretation renders the second clause meaningless. Pet. App. 28a. As the universe of comparators shrinks, pregnant

workers' rights (contingent as they are upon treatment afforded their comparators) do as well.[8]

By introducing factors other than the ability or inability to work, the Fourth Circuit not only engaged in impermissible judicial redrafting, but it rendered the protections of the second clause meaningless. Under its interpretation, the only protection the PDA establishes for pregnant workers is that provided by the inclusion of "pregnancy" within the protected class "sex", a task accomplished by the straightforward language of the first clause. In assigning no additional meaning to the second clause, the Fourth Circuit's ruling violates the foundational canon of statutory interpretation to interpret statutory language to avoid surplusage. *See Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991); *Corley v. United States,* 556

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[8] Today, the effect of the ADA Amendments Act of 2008 ("ADAAA"), Pub. L. No. 110-325, 122 Stat. 3553, 42 U.S.C. § 12101, et seq., further highlights the problems in this analysis. The ADAAA, passed after the facts in this case, requires employers to make reasonable accommodations for workers with temporary disabilities, including "impairments" that result in temporary lifting restrictions, like Ms. Young's. *See* 29 C.F.R. § 1630.2(j)(1)(ix). Pregnancy itself, however, is not an "impairment." 29 C.F.R. § 1630.2(h). Under the Fourth Circuit's reasoning, an employer today could potentially justify denying accommodations to pregnant employees with multi-month lifting restrictions even when the employer consistently provided them to all non-pregnant employees with identical restrictions, by explaining non-pregnant employees were accommodated for the "pregnancy-neutral" reason of complying with the ADAAA. This would leave the second clause of the PDA a hollow promise.

U.S. 303, 314 (2009). Indeed, this Court expressly recognized the risk and error of doing so with respect to this specific language when it cautioned against "read[ing] the second clause out of the [Pregnancy Discrimination] Act." *Johnson Controls*, 499 U.S. at 205. In violation of this precedent, the Fourth Circuit adopted an interpretation that effectively eviscerates the protections in the second clause.[9]

II. The Legislative History of the PDA Confirms That the Decision Below Was Erroneous.

While the plain language of the PDA unambiguously reflects Congress's intent, that intent is further confirmed by reference to the statute's legislative history. "[P]roper construction [of a statute] frequently requires consideration of [its] wording against the background of its legislative history and in light of the general objectives Congress sought to achieve." *Wirtz v. Local 153, Glass Bottle Blower's Ass'n*, 389 U.S. 463, 468 (1968). The legislative history of the PDA makes clear that Congress's intent was to repudiate both the result and the reasoning of *Gilbert*, 429 U.S. 125. Indeed, the key, animating "central purpose" in passing the PDA was an intent to ensure that when

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[9] Moreover, just as this Court set aside EEOC guidance in *Gilbert*, the Fourth Circuit's decision also departs from the EEOC's interpretation of the PDA. *See* 29 C.F.R. § 1604, App. Q&A 5; EEOC, Enforcement Guidance: Pregnancy Discrimination and Related Issues (July 14, 2014), *available at* http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.

workers' physical ability to work is limited by pregnancy, they are granted the same benefits and conditions of employment as those whose ability to work is limited by other disabling conditions. *See*, *e.g.*, S. Comm. on Labor and Human Resources, 96th Cong., Legislative History of the Pregnancy Discrimination Act of 1978, 62-63 (Comm. Print 1979) ("PDA Legislative History") (statement of Sen. Williams).

A. The Legislative History Shows the PDA Was Intended to Override the Supreme Court's Misreading of Title VII in *Gilbert*.

As this Court recognized in *Guerra*, 479 U.S. at 285, the legislative history of the PDA demonstrates that Congress intended to overrule *Gilbert*. *E.g.*, S. Rep. No. 95-331, at 2-3 (1977) (describing "our disagreement with the *Gilbert* decision" as a motivating purpose of Senate bill); H.R. Rep. No. 95-948, at 3 (1978), *reprinted at* 1978 U.S.C.C.A.N. 4749, 4751 (expressing disagreement with *Gilbert* decision's interpretation of Title VII as necessitating the PDA); *Hearings on S. 995*, *supra*, 31 (statement of Ethel Bent Walsh, Vice Chairman) ("This legislation [the PDA] has, of course become necessary only because of the Supreme Court's decision last term in *General Electric v. Gilbert*, . . . [which] left a gaping hole in the protection afforded by Title VII to women."); *Legislation to Prohibit Sex Discrimination on the Basis of Pregnancy: Hearing on H.R. 5055 and H.R. 6075 Before the Subcomm. on Emp't Opportunities of the H. Comm. on Educ. and*

Labor, 95th Cong. 126 (1977) (statement of Drew S. Days, III, Assistant Attorney General, Civil Rights Division).

B. The Legislative History Demonstrates that Congress Expressly Intended to Enact a Standard that Required an Employer To Treat Pregnant Women The Same as Other Workers Similar in Their Ability or Inability to Work.

The legislative history of the PDA also confirms that the second clause has a separate and unique purpose: "it defines the appropriate standard for eliminating [pregnancy] discrimination, by providing that pregnant workers who are able to work shall be treated the same as other able workers, and that pregnant workers who are unable to work shall be treated the same as other disabled workers." *Hearing on H.R. 5055 and H.R.* 6075, *supra*, 32-33 (testimony of Susan Deller Ross, on behalf of the Campaign to End Discrimination Against Pregnant Workers). Congress declared that "[p]regnant women who are able to work must be permitted to work on the same conditions as other employees; and when they are not able to work for medical reasons, they must be accorded the same rights, leave privileges and other benefits, as other workers who are disabled from working." S. Rep. 95-331, at 4. Proponents sought to pass a bill that "would simply require that pregnant women be treated the same as other employees on the basis of their ability or inability to work," H.R. Rep. No. 95-948, at 4, *reprinted* at 1978 U.S.C.C.A.N. at 4752.

The second clause was thus intended "to specifically define the standards which require that pregnant workers be treated the same as other employees on the basis of their ability or inability to work," PDA Legislative History 206 (statement of Rep. Hawkins). Indeed, this Court has previously recognized Congress's intent, stating "we believe that the second clause was intended to overrule the holding in *Gilbert* and to illustrate how discrimination against pregnancy is to be remedied." *Guerra*, 479 U.S. at 285.

Legislative history further clarifies that a primary motivating purpose of the PDA was to ensure that medical needs arising out of pregnancy are treated the same by employers as medical needs arising out of disabilities and that employers could no longer relegate pregnancy-related limitations to a separate class of disabilities incompatible with work. A committee report explained that "the bill rejects the view that employers may treat pregnancy and its incidents as *sui generis*, without regard to its functional comparability to other conditions." S. Rep. No. 95-331, at 4; *see also* PDA Legislative History 115 (statement of Sen. Bayh) ("The whole purpose of this bill is to say that if a corporation, a business is to provide disability [benefits] that they cannot discriminate against women because of the unique character of disability that might confront them[.]"). To ensure that determination of the availability of benefits did not focus on the unique condition of pregnancy, the bill required that pregnant workers be treated like other workers with similar ability or

inability to work. *See* PDA Legislative History 67 (statement of Sen. Javits) ("The bill requires equal treatment when disability due to pregnancy is compared to other disabling conditions. . . [T]he bill adopts as its standard equality of treatment and thereby permits the personnel and fringe benefit programs already in existence for other similar conditions to be the measure of an employer's duty toward pregnant employees."); *id.* at 65 (statement of Sen. Williams) ("The purpose of the bill is to insure [sic] that women who are disabled by conditions related to pregnancy are compensated fairly and given a fair amount of assistance with their medical bills, in relation to their fellow employees who are disabled by other medical conditions.").

Congress considered how to ensure that pregnant workers be treated the same as other workers. Indeed, the House Committee Report made clear that "[t]he bill would simply require that pregnant women be treated the same as other employees on the basis of their ability or inability to work. The 'same treatment' may include employer practices of transferring workers to lighter assignments." *See* H.R. Rep. 95-948, at 4-5, *reprinted at* 1978 U.S.C.C.A.N. at 4752-53. The Senate Committee Report stated explicitly that the statute was intended to ensure that pregnant workers too "must be accorded the same rights, leave privileges and other benefits, as workers who are disabled from working." S. Rep. No. 95-331, at 4; *see also* PDA Legislative History 130-31 (statement of Sen. Cranston) ("Pregnant women who are able to

work must be permitted to work on the same conditions as other employees–and when they are not able to work for medical reasons they must be accorded the same rights, leave privileges, and other benefits as other employees who are medically unable to work."). As this history makes clear, Congress fully understood that the PDA would require an employer to provide pregnant workers the same type of accommodations that it provides to other employees.

C. The Decision Below Is in Contraposition to Congressional Intent and Reverts to Arguments Congress Rejected When Enacting the Legislation.

Despite the clear directives from Congress and this Court that the standard for measuring compliance with the PDA is comparing the treatment of pregnant workers with treatment of those who are similar in their ability to work, the Fourth Circuit's decision below reverts to the logic of *Gilbert* in finding that Title VII, even as amended by the PDA, only protects pregnant workers from policies that by their terms single out pregnancy or can be shown to be motivated by animus toward pregnant women. *Compare* Pet. App. 28a-29a (rejecting Ms. Young's claims because "a lack of charity does not amount to discriminatory animus directed at a protected class of employees") *with Gilbert*, 429 U.S. at 136, quoting *Geduldig*, 417 U.S. at 496-97 n.20 ("There is no more showing in this case than there was in *Geduldig* that the exclusion of pregnancy benefits is a mere 'pretex[t] designed to effect an invidious

discrimination against the members of one sex or the other.'"). Indeed, under the Fourth Circuit's analysis, the very disability insurance policy challenged in *Gilbert* would likely be permissible under the PDA, if by its terms it covered disabilities arising out of accidents or sickness and did not expressly note that pregnancy was thereby excluded; this would be a "pregnancy-blind" rule, absent a showing of animus motivating the exclusion. *See* Pet. App. 18a. In light of the express congressional repudiation of the reasoning and result in *Gilbert*, a legal analysis that would permit this result cannot be correct.

The Fourth Circuit expressed a concern that interpreting the PDA to provide pregnant workers the right to receive benefits whenever an employer provides benefits to another category of workers based on a similar inability to work would amount to preferential treatment for pregnant workers. Pet. App. 20a-21a. But similar arguments were considered—and rejected—during the debates over the PDA. Opponents of the PDA argued that "[t]he passage of this amendment would mean a permanent benefit imbalance in favor of women of child-bearing age," *Hearing on H.R. 5055 and H.R.* 6075, *supra*, at 260 (statement of National Retail Merchants Ass'n), and that the PDA "is an edict that a benefit will be granted to one class of women, those who are pregnant – and in effect discriminates against non-pregnant females and males," *Legislation to Prohibit Sex Discrimination on the Basis of Pregnancy Part II: Hearing on H.R. 5055 and H.R. 6075 Before the*

Subcomm. on Emp't Opportunities of the H. Comm. on Educ. and Labor, 95th Cong. 24 (1977) (testimony of the Electronic Industries Association, presented by Fred T. Thompson, Chairman of the Labor Relations Committee of EIA's Industrial Relations Council). *See also id.* at 38 (statement of Fred T. Thompson, Chairman of the Labor Relations Committee of EIA's Industrial Relations Council).

In response, proponents of the PDA explained that guaranteeing workers incapacitated by pregnancy the same treatment provided to other workers on the basis of incapacity does not improperly advantage pregnant workers. "This bill makes it clear that an employer must provide health and medical benefits on an equal basis, if he does so at all. It does not, however, require that an employer do anything more for his pregnant employees than he does for any other employees." PDA Legislative History 133 (statement of Rep. Mathias); *see also Hearing on H.R. 5055 and H.R.* 6075, *supra*, 171 (statement of Drew S. Days, III, Assistant Attorney General, Civil Rights Division) ("The proposed legislation does not purport to elevate pregnancy above other employment disabilities, and require employers to assume the costs of pregnancy when they would not do so with regard to other physical disabilities."). Although the PDA does not create an entitlement to pregnancy leave or other benefits where no worker receives leave or benefits based on inability to work, it does require that if a company provides a benefit to some groups of workers based on incapacity, that benefit must be provided to

pregnant workers similar to those workers in ability to work.

Respondent has argued that "[i]t is clear that Congress did not require employers to equate pregnancy with on-the-job conditions" and that "the legislative history is rife with examples specifically allowing employers to treat pregnant employees the same as employees injured off the job." Opp'n Cert. at 14. But Respondent misreads the legislative history. The legislative history of the PDA focuses closely on the type of disability insurance plan approved by the Court in *Gilbert* in explaining why the PDA would require an alternative result. That plan provided "nonoccupational sickness and accident benefits" to employees, other than pregnant employees. 429 U.S. at 128. The references in the legislative history to the PDA's requirement of equal treatment of pregnant employees and other employees with nonoccupational disabilities are a specific reaction to the Court's approval of that plan and similar plans, not a limitation on the PDA's reach. *See Newport News Shipbuilding*, 462 U.S. at 679 (noting that focus of congressional discussion at time of PDA's enactment "does not create a 'negative inference' limiting the scope of the [A]ct to the specific problem that motivated its enactment."). References to nonoccupational injuries during Congress's consideration of the PDA cannot be read to limit the plain language of the statute.[10]

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[10] Of course, in this case, UPS accommodated nonoccupational conditions as well as occupational conditions.

III. The Protection Afforded by the PDA's Requirement that Pregnant Workers Be Judged Solely on Their Ability or Inability to Work Remains Necessary Today.

Pregnant workers in the mid-1970s faced a myriad of stereotypes and assumptions about their ability to work and their commitment to work that often resulted in discriminatory treatment, including attempts to push them out of the workforce entirely. Congress passed the PDA because it understood that protections for pregnant workers were necessary, given a long history of employers forcing women off the job regardless of their actual ability to work and of treating pregnancy differently from other medical conditions. As the Senate Committee Report observed:

> Even more important than our disagreement with the *Gilbert* decision is the fact that the decision threatens to undermine the central purpose of the sex discrimination prohibitions of title VII. As the testimony received by this committee demonstrates, the assumption that women will become pregnant and leave the labor market is at the core of the sex stereotyping resulting in unfavorable disparate treatment of women in the workplace.

S. Rep. 95-331, at 3.

Similarly, the House Report emphasized:

> Women are still subject to the stereotype that all women are marginal workers. Until a woman passes the child-bearing age, she is viewed by employers as potentially pregnant. Therefore the elimination of discrimination based on pregnancy in these employment practices in addition to disability and medical benefits will go a long way toward providing equal employment opportunities for women, the goal of Title VII of the Civil Rights Act of 1964.

H.R. Rep. 95-948, at 6-7, *reprinted at* 1978 U.S.C.C.A.N. at 4754-55; *see also, e.g.*, PDA Legislative History 181-82 (statement of Rep. LaFalce) ("Employers who believe pregnant women are unable to continue working or do not desire to work are imposing stereotypical notions on their employees [that] are archaic and undocumented by available statistics. The Supreme Court's ruling in *Gilbert* has served to reinforce the outdated argument that women depend upon men, and not their jobs, for support."); *id.* at 61 (statement of Sen. Williams) ("[M]ost policies and practices of discrimination against women in the workforce result from attitudes about pregnancy and the role of women who become pregnant which are inconsistent with the full participation of women in our economic system. Because of their capacity to become

pregnant, women have been viewed as marginal workers not deserving the full benefits of compensation and advancement granted to other workers."); *id.* at 129 (statement of Sen. Cranston) (the program at issue in *Gilbert* "demonstrates an example of the kind of sex stereotyping which has continually resulted in women being treated as second-class members of the work force").

The legislative history also demonstrates that a specific purpose of the PDA was to ensure that workers who had medical needs arising out of pregnancy would not be pushed onto unpaid leave, or out of work entirely, with potentially severe financial consequences for women and their families. In introducing the bill, Senator Harrison Williams stated:

> I am afraid that lurking between the lines of the *Gilbert* opinion is the outdated notion that women are only supplemental or temporary workers – earning "pin money" or waiting to return home to raise children full-time . . . . If [the law] is not changed, countless women and their families will be forced to suffer unjust and severe economic, social and psychological consequences. Many women disabled by pregnancy and childbirth will be forced to take leave without pay. The resulting loss of income will have a devastating effect

> on the family unit. The loss of a mother's salary will make it difficult for families to provide their children with proper nutrition and health care.

PDA Legislative History 3 (statement of Sen. Williams); *see also, e.g., id.* at 7 (statement of Sen. Brooke) ("[T]he effect of the Gilbert decision on these working women and their families could be devastating. Many women temporarily disabled by pregnancy will be forced to take leave without pay. In so doing, they must forfeit the income which holds their family together, which helps assure their children adequate nutrition and health care, and which helps keep their family off welfare."); *id.* at 12 (statement of Rep. Hawkins) ("The Court's decision [in *Gilbert*] will have a particularly severe impact on low-income workers who may be forced to go on leave without pay for childbirth or pregnancy-related disabilities. This loss of income may have serious repercussions for families dependent upon the wife's earnings.").

Many of the policies that push pregnant women out of work, and which the PDA was adopted to prohibit, are rooted in negative assumptions and stereotypes about working mothers. Unfortunately, decades after passage of the PDA, mothers continue to face stereotypes in the workplace, which circumscribe their opportunities. As this Court recognized as recently as 2003 in *Nevada Department of Human Resources v. Hibbs*:

> Stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. Because employers continued to regard the family as the woman's domain, they often denied men similar accommodations or discouraged them from taking leave. These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver, and fostered employers' stereotypical views about women's commitment to work and their value as employees.

538 U.S. 721, 736 (2003).

Social science confirms that women who become pregnant and who become mothers continue to struggle with the effects of false assumptions and stereotypes about the incompatibility of pregnancy or motherhood with paid work. *See, e.g.*, Stephen Benard et al., *Cognitive Bias and the Motherhood Penalty*, 59 Hastings L.J. 1359, 1386 (2008) ("Mothers (including expectant mothers) experience discrimination when they are being evaluated for hire and promotion, as well as on their job performance."). Indeed, recent research has confirmed that mothers are perceived as "less competent" and are less likely to be considered for high-level managerial positions than other female or male applicants. Madeline E. Heilman & Tyler G.

Okimoto, *Motherhood: A Potential Source of Bias in Employment Decisions*, 93 J. Applied Psychol. 189, 197 (2008); *see also* Amy J.C. Cuddy et al, *When Professionals Become Mothers, Warmth Doesn't Cut the Ice*, 60 J. Soc. Issues 701, 711 (2004) ("Perhaps most noteworthy, participants expressed less interest in hiring, promoting, and educating the working mother compared to the childless woman."). Recent jury awards confirm that employers have continued to discriminate against pregnant workers and working mothers on the basis of these stereotypes. *See, e.g.*, *Lust v. Sealy, Inc.*, 383 F.3d 580, 583 (7th Cir. 2004) (affirming jury verdict where defendant's manager admitted to failing to consider plaintiff for a promotion due to his assumptions that she would not want to relocate with her children); *Taylor v. Bigelow Mgmt., Inc.*, 242 F. App'x 178, 180 (5th Cir. 2007) (upholding jury verdict finding plaintiff had been demoted due to her pregnancy where her supervisor commented on the non-suitability of women for management positions because they get pregnant and miss work); *Walsh v. Nat'l Computer Sys., Inc.*, 332, F.3d 1150, 1160 (8th Cir. 2003) (affirming jury verdict in favor of plaintiff who was treated differently while pregnant and subjected to discriminatory comments upon her return from maternity leave).

Through its misreading of the PDA, the Fourth Circuit's decision undermines the law's protections against policies that push workers with limitations arising out of pregnancy off of the job. It thus threatens the protection the PDA offers against

adverse employment action on the basis of these stereotypes.

IV. The Proposed Pregnant Workers Fairness Act Would Reaffirm the PDA's Requirement that Pregnant Workers Receive Equal Treatment.

Undersigned *amicus* Representative Jerrold Nadler and undersigned *amici* Senator Robert P. Casey, Jr., and Senator Jeanne Shaheen have recently introduced the Pregnant Workers Fairness Act ("PWFA"), S.942, 113th Cong. (2013); H.1975, 113th Cong. (2013), a bill that currently has 140 co-sponsors in the House and 30 co-sponsors in the Senate. The PWFA would explicitly require employers to make reasonable accommodations for limitations arising out of pregnancy, childbirth, or related medical conditions unless such accommodations would impose an undue hardship—the same accommodations that the Americans with Disabilities Act (ADA) requires employers to provide for workers with disabilities. Initially introduced in 2012, the PWFA (which has not yet passed) was drafted to respond to the improper narrowing and misreading of the PDA by some lower courts, including that of the district court in Petitioner's case. *See, e.g.*, Letter from Hon. Jerrold Nadler to House of Representatives Colleagues (May 2, 2013) ("Congress passed the Pregnancy Discrimination Act of 1978 in order to end discrimination against pregnant workers. But thirty five years later, women still risk being forced out of the workplace if and when they become pregnant."); 158 Cong. Rec. H2459 (daily ed. May 9, 2012) (statement of Rep.

Nadler) ("Case law shows that courts are uncertain, even confused, about the scope of the law, requiring Congress to set the record straight."); Letter from Sen. Robert P. Casey, Jr. and Sen. Jeanne Shaheen to Senate Colleagues (May 8, 2013) ("Congress made a commitment to end discrimination against pregnant workers over 30 years ago. Unfortunately, too many women are still being forced to choose between healthy pregnancies and keeping their jobs.")

By explicitly adopting the "reasonable accommodation" and "undue hardship" definitions from the ADA, the PWFA would apply the same standard to accommodations for limitations arising out of pregnancy as the ADA applies to accommodations for disabilities. This reflects and reaffirms the PDA's guarantee of equal treatment for workers whose ability to work is affected by pregnancy and those whose ability to work is affected by disability. The PWFA would also streamline the proof requirements for pregnant workers denied these accommodations by ensuring that a worker with a limitation arising out of pregnancy did not have to identify a non-pregnant comparator in any particular case who had already received the reasonable accommodation sought.

Any argument that the introduction of the PWFA is evidence that the PDA does not currently provide accommodation rights in cases like this one is meritless and gravely misreads the intent of the

PWFA's sponsors.[11] The PWFA was drafted to reaffirm the PDA's requirement of equality of treatment using an alternative model, in order to ensure women would no longer be harmed by erroneous decisions like those below. That is, the central motivating purpose of the PWFA is to ensure compliance with the PDA's mandate that those whose ability to work is affected by pregnancy are treated as well as those whose ability to work is affected by disability. *Amici*, many of whom are co-sponsors of the PWFA, believe that reversal of the Fourth Circuit decision is compelled by the PDA.

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[11] Moreover, a proposed bill on which Congress has taken no formal action does not change the plain language of a previously enacted statute, nor does it amend that statute's legislative history.

CONCLUSION

For the foregoing reasons, *amici* urge the Court to grant the appeal of Peggy Young and reverse the judgment of the U.S. Court of Appeals for the Fourth Circuit.

Dated: September 11, 2014

Respectfully submitted,

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ADDENDUM

Appendix A: Identity of Individual *Amici*

Robert P. Casey, Jr.*
Jeanne Shaheen*
Tammy Baldwin*
Mark Begich*
Richard Blumenthal*
Barbara Boxer*
Sherrod Brown*
Benjamin L. Cardin*
Christopher A. Coons*
Richard J. Durbin*
Al Franken*
Tom Harkin*
Mazie K. Hirono*
Tim Kaine*
Patrick Leahy*
Joe Manchin III
Edward J. Markey*
Jeff Merkley*
Barbara A. Mikulski*
Christopher S. Murphy*
Patty Murray*
Harry Reid
Brian Schatz*
Charles E. Schumer*

Nancy Pelosi
Steny H. Hoyer
Jerrold Nadler*
Diana DeGette*
Louise McIntosh Slaughter*
John Conyers, Jr.*

George Miller*
Elijah E. Cummings*
Robert A. Brady*
Karen Bass*
Ami Bera*
Suzanne Bonamici*
Corrine Brown*
Julia Brownley*
Lois Capps*
Tony Cárdenas*
Matt Cartwright*
Kathy Castor
Donna M. Christensen*
Judy Chu*
David N. Cicilline*
Katherine Clark*
Yvette D. Clarke*
Steve Cohen*
Jim Cooper*
Joseph Crowley*
Susan A. Davis*
Peter A. DeFazio*
John K. Delaney*
Rosa L. DeLauro*
Suzan K. DelBene*
Theodore E. Deutch*
Donna F. Edwards*
Keith Ellison*
Anna G. Eshoo*
Elizabeth H. Esty*
Chaka Fattah*
Bill Foster*
Lois Frankel*

Marcia L. Fudge*
John Garamendi*
Raúl M. Grijalva*
Luis Gutiérrez*
Janice Hahn*
Alcee L. Hastings*
Colleen W. Hanabusa*
Brian Higgins*
Michael M. Honda*
Jared Huffman*
Steve Israel*
Sheila Jackson Lee*
Hakeem S. Jeffries
Henry C. "Hank" Johnson*
Marcy Kaptur*
Joseph P. Kennedy, III
Ann McLane Kuster*
Barbara Lee*
Sander M. Levin*
Zoe Lofgren*
Nita M. Lowey*
Michelle Lujan Grisham*
Carolyn B. Maloney*
Doris O. Matsui*
Betty McCollum*
Jim McDermott*
James P. McGovern*
Jerry McNerney*
Grace Meng*
Gwen Moore*
James P. Moran*
Grace F. Napolitano*
Richard M. Nolan*

Eleanor Holmes Norton*
Bill Pascrell, Jr.*
Ed Perlmutter*
Gary Peters*
Scott H. Peters*
Chellie Pingree*
Mark Pocan*
Jared Polis*
Charles B. Rangel*
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