



JANUARY 2021 | FACT SHEET

National Women's Law Center Litigation Highlights - 2020

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Our litigation efforts are in full swing across NWLC. We are immensely proud of our work during 2020, including securing significant court victories, resolving matters through settlements, and supporting important cases through amicus briefs. We are grateful to our law firm partners and our partner advocacy organizations for their time, expertise and good-natured collaboration. Our 2020 litigation fell into three key categories:

- Cases against entities such as school districts and employers that engage in sex discrimination and create harm for women, girls and others.
- Cases against the administration for its harmful and illegal rules and changes in policies.
- Leading and participating in numerous amicus briefs in cases impacting women's rights, including cases championing LGBTQ rights, immigrant rights, racial justice, disability rights, and other areas that are critical components of the work to secure women's rights in full.

Our litigation highlights from 2020 are detailed below:

Education

- ***Victim Rights Law Center v. DeVos, Case No. 1:20-cv-11104-WGY (D. Mass.)***

On June 9, 2020, NWLC, along with co-counsel Morrison & Foerster LLP and Diane Rosenfeld of Harvard Law School in her individual capacity, filed a lawsuit against Betsy DeVos and the Administration's Department of Education, challenging new Title IX rules. The challenged rules, which took effect in August, reduce schools' obligations to respond to sex-based harassment and assault, and impose uniquely unfair and traumatizing procedures on student survivors. The lawsuit was brought on behalf of students who are impacted by the rule, and four organizations that advocate for student survivors of sexual harassment and assault: Equal Rights Advocates, Victim Rights Law Center, Legal Voice, and Chicago Alliance Against Sexual Exploitation. A bench trial took place on November 12, 2020 before US District Judge William G. Young of the District of Massachusetts, and we are awaiting the decision.

- ***A.P. v. Fayette County Board of Education, No. 3:19-cv-00109-TCB (N.D. Ga.)***

NWLC, along with co-counsel Mastando & Artrip LLC and Penn Law LLC, is continuing to litigate a lawsuit filed in August 2019 against the Fayette County Board of Education, Superintendent Joseph Barrow, Jr. and other school officials. The lawsuit was filed on behalf of "A.P.," a former Fayette County High School student, who was expelled after reporting that another student

had sexually assaulted her on school grounds. The lawsuit emphasizes that schools have a duty to make sure sexual assault doesn't deprive the survivor of educational opportunities—and they also have a duty not to retaliate. This year, we engaged in discovery including written discovery and taking several depositions of key school district officials, and we anticipate taking part in summary judgment motion practice by the spring.

- ***Goodwin v. Pennridge School District, No. 17-cv-02431-LDD (E.D. Pa.) & Jane Doe v. Pennridge School District, No. 17-cv-3570 (E.D. Pa.)***

In July 2020, NWLC, DLA Piper LLP, and Pennridge School District reached a settlement in two lawsuits filed in May 2017, *Goodwin v. Pennridge School District* and *Jane Doe v. Pennridge School District*. These Title IX lawsuits were filed on behalf of students and involved allegations that the District and former administrators failed to adequately address former students' reports of sexual harassment—including sexual assault and dating violence—and failed to train school employees on how to properly respond. In the settlement, in addition to the monetary resolution for the students, we worked to ensure regular education and training on harassment and bullying for staff and students.

- ***Hecox v. Little, Case: 20-35813 (9th Cir.)***

On December 21, 2020, NWLC, along with the Lawyers' Committee for Civil Rights and law firm partner Hogan Lovells, led 60 additional organizations committed to racial, gender, and LGBTQ justice in an amicus brief in *Hecox v. Little*. The case, filed by the ACLU on behalf of Lindsey Hecox, a college student who is a transgender woman, and Jane Doe, a female high school student who is cisgender, challenges Idaho's "Fairness in Women's Sport's Act." (H.B. 500). This is the only law in the country to impose a statewide ban on all women and girls who are transgender from participating in sports consistent with their gender identity. Our amicus brief argues that targeting trans women and girls is sex discrimination and that this violates Title IX. The brief warns that this provision will also harm women who are intersex and women who are cisgender, particularly Black and brown women and girls, whose bodies are more often policed.

- ***Peltier v. Charter Day School, No. 20-1001 (4th Cir.)***

On July 13, 2020, NWLC and Debevoise & Plimpton filed an amicus brief in the US Court of Appeals for the Fourth Circuit on behalf of 56 civil rights and public interest organizations, supporting a challenge to Charter Day School's sexist dress code. The students, represented by the ACLU, are challenging whether the school dress code policy, which requires all girls to wear skirts, "skorts," or "jumpers" to school, violates the Equal Protection Clause of the U.S. Constitution, the North Carolina state constitution, Title IX of the Education Amendments Act of 1972, and North Carolina state law. NWLC's brief argues that Title IX's prohibition on sex discrimination encompasses the "skirts requirement," and that sex stereotyping is harmful to women and girls, and that the rule will be more harshly enforced against Black and brown students, and will be particularly harmful for some LGBTQ students, and for some girls with disabilities.

- ***Jane Doe v. Fairfax County School Board (4th Circuit)***

On February 14, 2020, NWLC and firm partner Sidley Austin LLP submitted an amicus brief to the Fourth Circuit in this matter. The case was brought by a high school student against her school for failing to respond adequately when she was sexually assaulted on a school field trip. The student is represented by Correia & Puth, Ates Law Firm, and Public Justice. While the jury found that she was harassed and told responsible school officials, it nevertheless found the school not liable under Title IX based on deficient jury instructions. The brief argues that the District Court's jury instructions gave jurors the misimpression that Title IX requires school officials to have knowledge that sexual harassment actually occurred before they are obligated to take steps to address the harassment, when in fact "actual notice" of allegations of sexual harassment suffices. Nearly 30 allies, including organizations dedicated to civil rights, educational opportunities, and gender equality, signed our brief. The parties are scheduled for oral argument on January 25, 2021.

Reproductive Rights & Health

- ***Boston Alliance of Gay, Lesbian, Bisexual and Transgender Youth v. U.S. Dep't of Health, No. 1:2020-cv-11297 (D. Mass.)***

On July 9, 2020, NWLC, Transgender Law Center, the Transgender Legal Defense & Education Fund, the Center for Health Law and Policy Innovation of Harvard Law School, and law firm Hogan Lovells filed a lawsuit in the U.S. District Court for the District of Massachusetts against the Administration's attack on the Health Care Rights Law, also known as Section 1557 of the ACA. The Administration published a rule on June 19, 2020, that undermines the ACA's non-discrimination protections that prohibit discrimination in health care on the basis of race, color, national origin, age, disability, and sex — including pregnancy, gender identity, and sex stereotyping. NWLC filed an amended complaint on September 18, 2020 and continues to litigate the case.

- ***New York v. U.S. Dep't of Health & Human Servs., No. 19-4254 (2d Cir.)***

In 2019, NWLC teamed up with lawyers from Planned Parenthood Federation of America, Democracy Forward Foundation, and Covington & Burling to represent Planned Parenthood in a lawsuit brought in federal court in New York challenging the discriminatory Administration refusal of care rule that allows health care workers to put personal beliefs ahead of patient care. On Wednesday, November 6, 2019, the district court struck down the rule in its entirety, explaining that Congress never gave HHS authority to issue this regulation and that its claimed justifications for the rule were patently false. The Administration appealed the district court's decision to the U.S. Court of Appeals for the Second Circuit, and oral argument for the case is tentatively set for the week of March 15, 2020.

- ***Irish 4 Reproductive Health v. U.S. Dep't of Health & Human Servs., No. 3:18-cv-00491-PPS-JEM (N.D. Ind.)***

In June 2018, NWLC, along with partners Americans United for Separation of Church and State and the Center for Reproductive Rights, sued Notre Dame and the administration on behalf of student group Irish 4 Reproductive Health and other women covered by health plans sponsored by Notre Dame. The lawsuit challenges Administration rules that would allow virtually any employer or university claiming a religious or moral objection to exempt themselves from the ACA birth control benefit and deny insurance coverage of birth control to employees, students, and their dependents. The lawsuit also challenges a secret settlement agreement between Notre Dame and the Administration that gave Notre Dame a free pass from complying with the law. After litigating this case throughout 2019, NWLC and its partners secured a major victory in January 2020, defeating Notre Dame's and the administration's motions to dismiss, which allowed most claims in the case to proceed. In April 2020, the district court stayed the case pending the Supreme Court's decision in *Little Sisters of the Poor*, discussed below. After the decision was issued, we filed an amended complaint on August 20, 2020 and the administration again attempted to dismiss the suit. A decision on the second round of motions to dismiss is pending.

- ***Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, No. 19-431 (U.S. Sup. Ct.)***

In April 2020, NWLC, with our partners the National Asian Pacific American Women's Forum, the National Latina Institute for Reproductive Justice, SisterLove, Inc., law firm Lowenstein Sandler, and 50 other organizations, filed an amicus brief in the U.S. Supreme Court in support of Pennsylvania and New Jersey's challenge to the Administration's religious and moral exemptions to the ACA birth control benefit – the same rules challenged by NWLC in the Irish 4 Reproductive Health litigation. The Supreme Court ruled that the rules could go into effect, for now. Justice Ginsburg, however, dissented. Citing our amicus brief three times, Justice Ginsburg focused on the purpose of the ACA birth control benefit to reduce discrimination and ensure equal access to health care. She highlighted how the rules would undermine those goals and be harmful to people accessing contraception, the very people the ACA was designed to protect. Justice Ginsburg was a champion of reproductive rights, and her legacy of great dissents speak to a future age, writing not for today but for a more inclusive and just tomorrow.

- ***California v. Texas, No. 19-840 (U.S. Sup. Ct.)***

On May 13, 2020, NWLC, along with the National Partnership for Women and Families, the Black Women's Health Imperative, the American Medical Women's Association, counsel Goodwin Procter, and 77 additional organizations, filed an amicus brief to the U.S. Supreme Court supporting California's defense of the Affordable Care Act in *California v. Texas*, consolidated with *Texas v. California*. In this case, a group of states led by Texas is attempting to dismantle the entirety of the ACA by arguing

that the ACA's "individual responsibility provision" was rendered unconstitutional when Congress reduced the tax for not having health insurance to zero as part of tax reform in December 2017. In the amicus brief, we explain the devastating impact that striking down the ACA would have on women and their families—and particularly on women and families of color. We also emphasized that the COVID-19 pandemic and impending economic recession make the ACA's protections even more critical for women's health and economic security.

Workplace Justice

- ***Pieper v. CableConn Industries, Inc., No. 37-2020-00030894-CU-OE-CTL (Cal. Sup. Ct.)***

On September 2, 2020, NWLC and co-counsel Levy Vinick Burrell Hyams LLP filed a lawsuit in California Superior Court against cable manufacturing company CableConn Industries, Inc., its CEO and President, and two company supervisors. The lawsuit alleges that the defendants violated California's Fair Employment and Housing Act, along with other state laws, by sexually harassing and assaulting three women employees and failing to prevent and appropriately address the unsafe work environment. The parties are currently engaged in initial discovery and related negotiations.

- ***Borders v. Wal-Mart Stores, Inc., No. 17-cv-00506 (S.D. Ill.)***

On April 29, 2020, US District Judge Stacy M. Yandle of the Southern District of Illinois approved a \$14 million settlement in our class action pregnancy discrimination lawsuit against Walmart brought by NWLC, along with co-counsel Mehri & Skalet PLLC and A Better Balance. Seven years in the making, this lawsuit is one of the first pregnancy accommodation cases in the country to settle as a class action. This case arose out of Walmart's discriminatory policies and practices concerning accommodations in the workplace for pregnant employees. The settlement was divided among approximately 4,000 women who were denied pregnancy accommodations while working at Walmart between March 2013 and March 2014.

- ***NWLC v. OMB & EEOC, 17-cv-2458 (D.D.C.)***

In March 2019 NWLC secured a major pay data collection victory against the administration, alongside our co-counsel Democracy Forward. The case involved the administration blocking an important Obama-era equal pay data collection initiative that required large employers to report pay data by race, ethnicity and gender and job category. We won a huge victory when a federal district court judge ruled in our favor and said the administration broke the law when it stopped the pay data collection. In 2020, the government appealed the decision to the DC Circuit on the legal question of whether we had "standing" and whether the district court judge overreached in seeking a host of remedies to ensure compliance with its ruling. The government sought an order from the trial court judge indicating that the 2017-2018 pay data collection efforts were complete, but the court ruled in late October 2019 ruling that the collection efforts must continue through January 2020. While the appeal was pending in the DC Circuit, EEOC continued to collect pay information as required by the district court's ruling. On February 10, 2020, the district court ruled that the EEOC's collection was complete, mooting the appeal of the case as the agency had remedied the issue. However, the administration is now asking the court to take extraordinary action and vacate the initial March 2019 opinion. NWLC is opposing these efforts, emphasizing that the EEOC mooted the case by its own voluntary actions—circumstances under which courts cannot grant vacatur. The parties are now awaiting a decision from the district court on whether the underlying opinion should be vacated.

- ***Tudor v. Southeastern Oklahoma State University, No. 18-6102 (10th Cir.)***

On November 16, 2020, NWLC took part in the Tenth Circuit appellate argument in support of Dr. Rachel Tudor, a transgender woman professor. After Dr. Tudor won her jury trial in November 2017, the federal district court still refused to allow her to return to a tenure-track position at her previous job or provide her with appropriate front-pay for lost earnings. NWLC and firm partner Cohen & Gresser LLP filed an amicus brief in this appeal in 2018, arguing that the district court overlooked critical evidence that shows little hostility remains between the parties, and the presume relief is reinstatement. Dr. Tudor's case was then stayed until the Supreme Court decision in *Bostock* that was issued in June 2020. Erica Lai from Cohen & Gresser LLP represented NWLC at the oral argument and argued that the appropriate and presumed remedy for Dr. Tudor here is reinstatement. We are waiting an opinion from the court.

- ***Pambakian v. Blatt*, No. 20-55076 (9th Cir.)**

On July 6, 2020, NWLC, along with the American Association for Justice, law firm Lieff Cabraser Heimann and Bernstein, LLP, and 46 other groups, filed an amicus brief in *Pambakian v. Blatt* in support of Rosette Pambakian, a Senior Executive at Tinder who was sexually harassed and assaulted by Tinder and Match CEO Gregory Blatt in 2016. After Pambakian refused to sign a non-disclosure agreement, Match foisted a new, company-wide arbitration agreement on her via email, which she unknowingly signed as part of a broader acceptance of Match's "corporate policies." The trial court dismissed Pambakian's lawsuit, holding that the agreement required her to arbitrate her claims, and Pambakian appealed to the Ninth Circuit. NWLC's amicus brief emphasizes the danger and unfairness of forced arbitration agreements that keep sexual harassment cases out of court and out of the public awareness, silences victims, obstructs legal change, and allows sexual harassers to evade accountability.

Income Security

The NWLC Income Security team participated as amicus in two Fair Housing Act cases this year, and in two cases that resulted in victories against the administration's illegal changing of regulations including in the SNAP food assistance benefits and the immigration "public charge" context.

- ***Francis v. Kings Park Manor*, No. 15-1823 (2nd Cir.)**

On May 7, 2020, the National Women's Law Center, the ACLU Women's Right Project, the New York Civil Liberties Union, and our firm partners Jenner & Block LLP, were joined by 49 additional organizations as we submitted our amicus brief to the Second Circuit in support of the plaintiff in *Francis v. Kings Park Manor*. The case involves a Black tenant who faced severe racial harassment from a fellow tenant. The plaintiff alleges that the landlord had the obligation to take reasonable steps within its control to stop a hostile housing environment based on a protected class. The Second Circuit agreed with the plaintiff and now the court has voted to rehear the case en banc. NWLC's amicus brief addressed the consequences that this decision will have for housing protections for all tenants and particularly for women with regard to sexual harassment. We outlined how sexual harassment in housing is widespread and causes devastating harms that can lead to housing instability. We urged the Second Circuit to interpret the Fair Housing Act (FHA) in sync with comparable federal civil rights protections in other contexts. Ensuring the FHA's broad protections, including equal access to securing and maintaining safe housing, is especially important during economic crises like the one unleashed by the spread of the coronavirus.

- ***Fox v. Gaines*, No. 20-12620-HH (11th Cir.)**

On September 30, 2020, NWLC joined the National Fair Housing Alliance, ACLU Women's Rights Project, and other civil rights groups in submitting a proposed amicus brief to the Eleventh Circuit in *Fox v. Gaines* in support of Rita Fox, a tenant who faced ongoing sexual harassment by her landlord, including retaliation when she opposed his advances. The district court held that quid-pro-quo sexual harassment is not actionable sex discrimination under the Fair Housing Act (FHA). The amicus brief requests the appellate court reverse the decision below, specifically explaining that sexual harassment, including as here, quid-pro-quo sex harassment, is sex discrimination under the FHA just as it is actionable under comparable laws.

- ***District of Columbia v. U.S. Dep't of Agriculture*, No. 1:20-cv-00119-BAH (D.D.C. 2020)**

On July 8, 2020, NWLC joined the Lawyers' Committee for Civil Rights Under Law in submitting an amicus brief in *District of Columbia v. U.S. Department of Agriculture*. The brief opposed USDA's draconian rule that would take critical food assistance away from at least 700,000 unemployed and underemployed people, and possibly more because of the COVID-19 pandemic and recession. The amicus brief described how the rule would have disproportionate impacts in ways that harm women of color, as well as people of color of all genders. On October 18, 2020 the district court sided with NWLC's arguments and granted summary judgment to the plaintiffs and vacated the SNAP time limits rule. The court vacated this harmful rule on October 8, 2020 stating that the rule: "abruptly alters decades of regulatory practice, leaving States scrambling and

exponentially increasing food insecurity for tens of thousands of Americans. Whether USDA could, using a legally proper process, adequately explain how the Final Rule’s changes both comport with the statutory scheme and make sense is a question for another day. For now, the agency has not done so.”

- **Challenging Department of Homeland Security’s harmful public charge rule (9th Circuit)**

- *State of Washington v. U.S. Department of Homeland Security*
- *State of California v. U.S. Department of Homeland Security*
- *City and County of San Francisco v. United States Citizenship and Immigration Services*

NWLC has taken part in several amicus brief efforts to push back against the administration’s illegal and harmful changes to the “public charge” rule. In January 2020, NWLC joined Asian Americans Advancing Justice | AAJC and Asian American Legal American Defense and Education Fund, along with over thirty additional organizations, to file amicus briefs in three related cases challenging this rule in the Ninth Circuit. The DHS rule would prohibit anyone who, at any time in the future, may use public benefits and subsidized housing from obtaining permanent resident status or extending their visa status. The administration’s public charge immigration rule would force immigrants to choose between receiving public benefits that help provide basic health care, nutrition assistance, and shelter—and potentially being separated from their families. We asked the Ninth Circuit to uphold the lower court’s decision blocking the rule from going into effect, as the rule is based on racial hatred and targets immigrants, women, and children from communities of color. On December 2, 2020, the Ninth Circuit ruled against the administration and affirmed the lower court’s decision. This means that the public charge rule continues to be blocked from being implemented in the Ninth Circuit, and in certain other regions that were involved in these cases.

Cross-Cutting Matters

- ***Fulton v. City of Philadelphia*, No. 19-123 (U.S. Sup. Ct.)**

On August 20, 2020, The National Women’s Law Center, along with our law firm partner Dentons and 35 additional civil rights and gender justice organizations, filed an amicus brief to the U.S. Supreme Court supporting the City of Philadelphia and intervenors Support Center for Child Advocates and Philadelphia Family Pride, represented by the ACLU, in *Fulton v. City of Philadelphia*. In this case, Catholic Social Services claimed that because of its religion it need not comply with Philadelphia’s laws prohibiting discrimination on the basis of sexual orientation and gender identity and is attempting to force the City to reinstate their taxpayer-funded foster care services contract despite its refusal to comply with these laws. In our amicus brief, we explain the broader harms to women and girls that could flow from a ruling against the City of Philadelphia. Allowing entities with religious objections to use government funds to discriminate based on sex could threaten harm to women and girls in all areas of their lives, including access to education, in the workplace, obtaining healthcare, and in public spaces. A ruling for Catholic Social Services would invite countless challenges to otherwise neutral anti-discrimination laws and threatens a major setback in the decades-long fights against sex discrimination.

- ***Sagaille v. Carrega*, Case No. 2020-02369 (1st Dep’t., N.Y. Sup. Ct. App. Div)**

On August 10, 2020 NWLC, Kirkland & Ellis, and 39 other civil rights and survivor advocate organizations, filed an amicus brief in support of Christina Carrega, a sexual assault survivor who was sued for defamation by the individual she named in her police report. Although New York law offers some protections against defamation liability for people who report misconduct to law enforcement, the court in Christina’s case held that she was not entitled to those protections *solely* because sexual assault was the type of misconduct that she reported. Our amicus brief, filed in New York Supreme Court, emphasizes that courts must not allow defamation lawsuits against survivors to proceed based on harmful and false sex stereotypes.