



**NATIONAL
WOMEN'S
LAW CENTER**

Justice for Her. Justice for All.

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National Women's Law Center 2022 Litigation Highlights

BY SUNU P. CHANDY, LEGAL DIRECTOR & PHOEBE WOLFE, LITIGATION FELLOW

INTRODUCTION & SUMMARY

While 2022 has certainly been a difficult year to seek gender justice from the courts, we are proud of NWLC's litigation efforts. From litigating sex discrimination cases to submitting amicus briefs, we have continued to use litigation as one of our tools to secure justice. Alongside these positive updates, we also need to name that this is certainly a time of outrage. From leaked opinions to many unjust rulings, the integrity of this Supreme Court has come into question. We refuse to normalize the offensive and often lawless ways of the majority on this Court, including how it has turned its back on basic norms of our legal system. However, we also know we cannot leave litigation to our opponents, and so we continue to fight the good fight, and we are excited to share these highlights.

In 2022, we finalized a significant settlement in our Title VII [sexual harassment case](#), and filed a new federal [equal pay case](#). We also recently filed an Emergency Medical Treatment and Active Labor Act (EMTALA) administrative [complaint](#) on behalf of a woman denied emergency medical treatment for pregnancy complications following the legal chaos caused by the *Dobbs* decision overturning *Roe*. Litigation also continues in our [class action](#) challenging Aetna's discriminatory practices against LGBTQ+ policyholders seeking fertility treatments and our [Title IX appeal](#) in support of a student survivor. We are also continuing to monitor our several cases challenging harmful Trump-era rules to ensure that they are rescinded. In our equal pay data collection [case](#), we secured a final victory, ensuring that decision in our favor will remain on the books.

We led 19 amicus briefs this year in cases that implicated important civil rights protections, including U.S. Supreme Court briefs involving [affirmative action](#) and whether businesses may [turn away](#) LGBTQ customers. Dozens of advocacy organizations signed on to our amicus briefs, adding to the strength and

reach of our arguments. We also joined over 10 amicus briefs filed by partner organizations. This year also brought several wins in past NWLC amicus cases, including in favor of: 118 male survivors in a Sixth Circuit [case](#), gender-affirming healthcare in an Eighth Circuit [case](#), a former judiciary employee survivor in a Fourth Circuit [case](#), an Indigenous woman survivor in a Montana state court [case](#), a worker who defeated the ministerial exemption in a Tenth Circuit [case](#), and app-based drivers in a Massachusetts state court [case](#). NWLC's amicus briefs can be found on [our website](#), and additional details regarding these matters are provided below.

NWLC's litigation is one part of our larger work of fighting to improve our society. The intense work involved in NWLC's litigation is typically handled by NWLC attorneys in each program, most of whom work on these cases alongside policy work. The Reproductive Rights and Health team also includes dedicated litigation staff: Michelle Banker, RRH Litigation Director, and Alison Tanner, Senior Litigation Counsel. These matters are supported by Marissa Moore, Program Associate for Education and Workplace Justice; Christina Iruela Lane, Assistant for Education and Workplace Justice; and Amalia Gradie, Assistant for Reproductive Rights and Health. Our Development team colleagues also help secure law firm representation, and the Communications team fulfills a critical role in amplifying NWLC's litigation work to change the public narrative and our overall culture. While it is always exciting to obtain a positive court ruling, settle a case, or have our amicus brief cited by a court, we know the greater purpose is to highlight the stories of the people in these cases, and to help fight back against broader injustices. We know these efforts are one part of our collective work towards a better world. Thank you for supporting NWLC's litigation work across the organization.

NWLC CASES

- **Myliissa Farmer (Ctrs. for Medicare & Medicaid Servs.)** - Challenging denial of emergency abortion for pregnancy complications

On November 8, 2022, NWLC filed a [complaint](#) with the Centers for Medicare & Medicaid Services on behalf of Myliissa Farmer pursuant to the Emergency Medical Treatment and Active Labor Act (EMTALA), a federal law that ensures patients receive the emergency medical care they need. In our complaint, NWLC makes clear that it is critical that the federal government take swift and decisive action to investigate whether health care providers are acting in compliance with EMTALA and enforce this law when there are violations.

- **Schulman v. Zoetis, Inc.** (D.N.J.) - Challenging unequal pay

On March 14, 2022, NWLC and law firm partners Kakalec Law PLLC and Harrison, Harrison & Associates, Ltd., [filed a lawsuit](#) in New Jersey federal district court against Zoetis, Inc., alleging the company significantly underpaid a female veterinary pathologist compared to at least two of her male colleagues who performed the same job but had far less experience. The plaintiff, Dr. Yvonne Schulman, is bringing claims against Zoetis for violations of the Equal Pay Act and Title VII, as well as New Jersey equal pay and antidiscrimination law. Zoetis filed a motion to dismiss Dr. Schulman's New Jersey claims on June 6, 2022, and we filed our [opposition](#) on July 5, 2022. A decision on the motion is pending as discovery progresses.

- **Goidel v. Aetna (S.D.N.Y.)** - Challenging healthcare discrimination against LGBTQ individuals

NWLC and co-counsel Emery Celli Brinckerhoff Abady Ward & Maazel LLP continue to litigate our [class action lawsuit](#) in federal court in New York challenging Aetna's discriminatory practices against LGBTQ policyholders seeking fertility treatments. On September 13, 2021, Emma Goidel, the plaintiff in the suit, and her spouse sued under Section 1557 of the Affordable Care Act, which prohibits discrimination in health care, and other state nondiscrimination laws. In November 2021, we [amended our complaint](#) to add three more plaintiffs. The case is in discovery.

- **A.P. v. Fayette County Board of Education (N.D. Ga.)** - Appealing Title IX decision on behalf of student survivors

NWLC filed this [lawsuit](#) in August 2019 on behalf of A.P., a former Fayette County High School student who was expelled after reporting that another student had sexually assaulted her at school. In June 2021, a federal district court granted summary judgment in favor of the defendant school district on all claims, dismissing A.P.'s case. On October 15, 2021, NWLC, along with co-counsel Mastando & Artrip LLP and the Georgetown Appellate Immersion Clinic, filed [an appeal](#) to the Eleventh Circuit asking the court to reverse the district court's decision. On July 14, 2022, the Eleventh Circuit heard oral arguments and a decision on the appeal is pending.

Our Cases Against Trump-Era Rules

This year, we secured a final victory in [our case](#) challenging the Trump administration's illegal rollback of equal pay data collection, *NWLC v. Office of Management and Budget* (D.D.C.). In March 2019, the district court [granted summary judgment](#) in favor of NWLC and our co-counsel Democracy Forward, finding that the Trump administration violated the law when it halted its pay data collection and requiring the government to resume collecting pay data. On February 28, 2022, the district court denied the defendants' motion to vacate the summary judgment decision, closing the case and keeping our terrific win on the books.

In [our lawsuit](#) challenging the Trump administration's refusal of care rule, filed alongside Planned Parenthood, Democracy Forward, and Covington and Burling LLP, the parties entered into a stipulation on December 8, 2022 to dismiss without prejudice the consolidated appeals by HHS OCR and the intervenors. And so, for now [our victory](#) at the district court vacating the rule stands.

We are also continuing to monitor our other litigation challenging harmful rules promulgated by the Trump administration to ensure that they are rescinded or replaced. These cases include a [lawsuit](#) fighting a discriminatory rule on the implementation of Section 1557 of the ACA, filed with the Harvard Center for Health Law & Policy Innovation, the Transgender Legal Defense and Education Fund, the Transgender Law Center, and Hogan Lovells US LLP; our [lawsuit](#) challenging religious refusal rules for birth control access, filed alongside Americans United for Separation of Church and State, the Center for Reproductive Rights, Fried, Frank, Harris, Shriver & Jacobson LLP, and Macey Swanson LLP; our [lawsuit](#) against a rule that would make it harder for people to access health care, including abortion, filed in partnership with Planned Parenthood, Democracy Forward, and Covington Burling LLP; our [lawsuit](#) challenging a Title IX rule weakening civil rights protections against sexual harassment in schools, filed with Morrison & Foerster LLP and Diane Rosenfeld of Harvard Law School in her individual capacity; and our [lawsuit](#) challenging an OFCCP rule that unlawfully expanded the "religious exemption" to federal contractors' nondiscrimination obligation, filed alongside Democracy Forward and Albies & Stark LLC. Each of these cases is currently stayed pending rulemaking from the Biden administration.

Sexual Harassment and Retaliation Settlement

- **Pieper v. CableConn Indus., Inc., (Cal. Super. Ct.)** - Resolving sexual harassment lawsuit

After a lengthy legal fight that [began](#) in September 2020, NWLC and co-counsel Levy Vinick Burrell Hyams LLP obtained a settlement on behalf of three women of color in a sexual harassment case against CableConn Industries, Inc. The settlement was approved by the court in August 2022. In addition to monetary relief, the settlement requires that CableConn implement important changes to existing policies and procedures related to sex harassment and other forms of discrimination.

AMICUS BRIEFS

U.S. Supreme Court

- **303 Creative v. Elenis (U.S. Sup. Ct.)** - Defending anti-discrimination protections for LGBTQ individuals and others in public marketplace

On August 19, 2022, NWLC, along with our law firm partner Covington & Burling LLP and 35 additional advocacy organizations, filed an [amicus brief](#) to the U.S. Supreme Court in *303 Creative v. Elenis*. NWLC filed in support of Colorado and its state civil rights law, the Colorado Anti-Discrimination Act (“CADA”), which prohibits businesses that serve the public from discriminating against customers based on protected characteristics, like race, sex, sexual orientation, national origin, or disability. NWLC’s amicus brief [explains](#) why the Supreme Court must not allow businesses to violate public accommodations laws merely because they claim a “free speech” right to turn away some customers.

- **Students for Fair Admissions v. Harvard/UNC (U.S. Sup. Ct)** - Defending race-conscious admissions policies in higher education

On August 1, 2022, NWLC, along with our law firm partner, Linklaters LLP and 37 additional civil rights organizations, filed an [amicus brief](#) in *Students for Fair Admissions v. Harvard College* and *Students for Fair Admissions v. University of North Carolina* in support of the universities and their holistic race-conscious admissions policies. Our amicus brief [defends](#) the interest in maintaining a diverse student body and ensuring that past discrimination does not perpetuate ongoing exclusion, and focuses on the impact these policies have on women of color.

Other Courts

EDUCATION

- **A.M. v. Indianapolis Public Schools (7th Cir.)** - Highlighting Title IX and constitutional protections for transgender girls in the context of sports

On November 10, 2022, NWLC, along with our law firm partner Hogan Lovells US LLP and 58 additional organizations, filed an [amicus brief](#) to the Seventh Circuit in *A.M. v. Indianapolis Public Schools*. We filed in support of A.M., a 10-year-old transgender girl who was kicked off her elementary school softball team as a result of Indiana’s ban against transgender girls participating on girls’ sports teams. NWLC’s amicus brief [discusses](#) the importance of ensuring that all girls can access the well-documented benefits of playing sports, free from discrimination.

- **Sinclair v. San Jose Unified School District Board of Education (9th Cir.)** - Focusing on nondiscrimination protections in the context of student clubs

On July 25, 2022, NWLC, along with our law firm partner, Debevoise & Plimpton LLP, and 21 additional advocacy organizations, filed an [amicus brief](#) in *Sinclair v. San José Unified School District Board of Education* in support of the school district and its nondiscrimination policies that require official school clubs to be open to everyone. NWLC’s brief [urged](#) the Ninth Circuit to hold that the district was allowed to deny official recognition to a student club that discriminated against LGBTQ students.

UPDATE: *On August 29, 2022, the appeals court issued a negative decision ordering the school to reinstate the club as the case proceeds. The school district, represented by Americans United for Separation of Church and State, filed a petition for rehearing en banc on September 6, 2022, and a decision is pending.*

- **Brown v. Arizona (9th Cir.)** - Highlighting parameters of Title IX protections for student survivors

On April 4, 2022, NWLC filed an [amicus brief](#) with our law firm partner, Hutchinson, Black & Cook, and 31 additional advocacy organizations to the Ninth Circuit in *Brown v. Arizona*. NWLC filed the brief in support of Mackenzie Brown, a former University of Arizona student, who seeks to hold her school accountable for the sexual assault she suffered by a former student. NWLC's brief [outlines](#) the dangers of allowing schools to ignore sexual assault just because it occurs in off-campus housing, just steps from the campus.

- **Carolina Youth Action Project (CYAP) v. Wilson (4th Cir.)** - Focusing on the harms that target particular groups of students who face discriminatory school discipline

On March 23, 2022, NWLC, along with the NAACP, the National Disability Rights Network, and the National Center for Youth Law, filed an [amicus brief](#) with our law firm partner, Debevoise & Plimpton LLP, to the Fourth Circuit. NWLC filed the brief in [support](#) of public-school students in South Carolina and the Carolina Youth Action Project, who are challenging South Carolina's "Disorderly Conduct" law and the "Disturbing Schools" law as unconstitutionally vague.

- **Moxley v. Ohio State University (6th Cir.) & Snyder-Hill v. Ohio State University (6th Cir.)** - Highlighting the importance of not cutting short the statute of limitations period for survivors / student athletes

On February 9, 2022, NWLC and Women's Sports Foundation, alongside our law firm partner Weil, Gotshal & Manges LLP and 49 additional advocacy organizations, filed [amicus briefs](#) to the Sixth Circuit in *Moxley v. Ohio State University* and *Snyder-Hill v. Ohio State University*. The briefs were filed in [support](#) of 118 former Ohio State University male students, including student-athletes, who were sexually abused by Dr. Richard Strauss from 1978 to 1998.

VICTORY: On September 14, 2022, in a victory for the former OSU students, the Sixth Circuit revived their claims, holding that the plaintiffs adequately alleged they did not know and could not have known that OSU injured them until 2018.

WORKPLACE JUSTICE

- **Billard v. Charlotte Catholic High School (4th Cir.)** - Highlighting the limited religious exemption in Title VII and the dangers of expanding it

On November 30, 2022, NWLC, along with our law firm partner Debevoise & Plimpton LLP and 47 additional organizations, filed an [amicus brief](#) to the Fourth Circuit in *Billard v. Charlotte Catholic High School*. We filed in support of Lonnie Billard, a former drama teacher and current substitute teacher at Charlotte Catholic High School who was fired after announcing on Facebook that he planned to marry his long-time same-sex partner. NWLC's amicus brief [explains](#) the harms that would result if religious employers were given the right to engage in sex discrimination whenever they were religiously motivated to do so, and how this is not permitted by the limited exemptions contained in Title VII.

- **Boyer v. U.S. (Fed. Cir.)** - Highlighting how the federal government's use of salary history in setting employees' pay perpetuates sex discrimination

On September 30, 2022, NWLC, along with our law firm partner, the Federal Practice Group, and 46 additional organizations, filed an [amicus brief](#) to the Federal Circuit in *Boyer v. U.S.* in support of a pharmacist for the Department of Veterans Affairs who was paid less than a male colleague in the same position. NWLC's amicus brief [asks](#) the appeals court to reverse the trial court's decision dismissing the employee's claims after finding that the government was allowed to rely on the employees' prior salaries to justify the pay disparity under the Equal Pay Act.

- **Mundell v. Acadia Hospital Corp. (1st Cir.)** - Highlighting that Maine Equal Pay Law does not have an intent requirement

On September 29, 2022, NWLC co-led an [amicus brief](#), alongside the American Civil Liberties Union and the American Civil Liberties Union of Maine, to the First Circuit in *Mundell v. Acadia Hospital Corp.* The case was brought by Dr. Claire Mundell, a psychologist who learned in a chance conversation with her male colleague that he was being paid twice as much as she was, for the same work. Our amicus brief urges the First Circuit to uphold the federal district court's ruling that the Maine Equal Pay Law, like the federal Equal Pay Act, forbids sex-based disparities in employee pay, regardless of the employer's intent.

- **Restaurant Law Center v. U.S. Department of Labor (5th Cir.)** - Supporting DOL rule protecting the rights of tipped workers

On July 15, 2022, NWLC co-led an [amicus brief](#) to the Fifth Circuit in *Restaurant Law Center v. U.S. Department of Labor* to protect restaurant workers from wage theft and abusive labor practices. Alongside Democracy Forward, NWLC submitted a brief in support of the Department of Labor, urging the court to uphold the agency's final rule limiting the amount of time tipped employees can spend performing non-tip-producing work while still receiving cash wages as low as \$2.13 per hour.

- **Brnovich v. Walsh (D. Ariz.) & Texas v. Biden (S.D. Tex)** - Supporting the \$15 minimum wage for federal contractors

On May 9, 2022, NWLC co-led two amicus briefs with Democracy Forward defending the \$15 minimum wage for workers on federal contracts in Arizona and Texas. In *Arizona v. Walsh*, NWLC submitted an [amicus brief](#) to the U.S. District Court for the District of Arizona. In *Texas v. Biden*, NWLC submitted an [amicus brief](#) to the U.S. District Court for the Southern District of Texas. Both amicus briefs urged the courts to uphold the Biden administration rule governing wages for federal contractors.

- **Gottwald v. Sebert (N.Y. App. Ct.)** - Supporting survivor facing defamation lawsuit

On April 22, 2022, NWLC, alongside our law firm partner Latham & Watkins LLP, [led an amicus brief](#) on behalf of 35 other organizations to the New York Court of Appeals in *Gottwald v. Sebert* in support of singer-songwriter Kesha, who has been sued for defamation by Dr. Luke, her former producer who sexually abused her in 2005 when she was 18 years old. Our amicus brief [explains](#) that survivors of sexual abuse face retaliation all too often, including in the form of defamation lawsuits, and that fear of retaliation deters many survivors from coming forward.

- **El Koussa v. Massachusetts (Mass. Sup. Jud. Ct.)** - Emphasizing workplace protection rights of gig workers

On April 12, 2022, NWLC, along with the National Partnership for Women and Families, 25 other organizations, and our law firm partners, Pontikes Law, LLC and Powers, Jodoin, Margolis & Mantell LLP, filed an [amicus brief](#) in the Massachusetts Supreme Judicial Court in support of app-based drivers seeking to challenge a ballot initiative that would misclassify them as independent contractors. Our brief [highlighted](#) the critical workplace protections that were at stake for women, and particularly women of color, if the ballot initiative were to pass.

VICTORY: On June 14, 2022, the Massachusetts court handed the parties a victory, holding that the challenged ballot initiatives failed to meet legal requirements and would be blocked from being placed on the ballot.

- **Ralph's Grocery Co. v. Brown (NLRB)** - Highlighting harms of employer-mandated confidentiality in arbitration and how this violates the NLRA

On March 21, 2022, NWLC filed an [amicus brief](#), along with Service Employees International Union (SEIU) and the National Employment Law Project (NELP), to the National Labor Relations Board highlighting that employers should not be able to force workers to accept confidentiality in arbitrations—and if they do, that violates the National Labor Relations Act. We [highlighted](#) the ways that employer-mandated confidentiality in arbitration can especially harm women workers, and in particular, low-paid women of color.

- **Bradford v. U.S. Department of Labor (10th Cir.)** - Supporting minimum wage increase for federal contract workers

NWLC, alongside the National Employment Law Project, Communications Workers of America, Service Employees International Union, and the Economic Policy Institute, submitted several amicus briefs at various stages of *Bradford v. U.S. Department of Labor*. On February 15, 2022, NWLC submitted an [amicus brief](#) to the Tenth Circuit in support of the U.S. Department of Labor's implementation of the \$15/hour minimum wage for workers on federal contracts. On April 27, 2022, we filed a [second amicus brief](#) in the Tenth Circuit urging the court to reject efforts to cut workers' wages and affirm the district court's denial of an injunction. On August 2, 2022, with the Tenth Circuit appeal on the injunction pending, NWLC filed an [amicus brief](#) to the Colorado district court on the merits of this case.

REPRODUCTIVE RIGHTS & HEALTH

- **Brandt v. Rutledge (8th Cir.)** - Challenging Arkansas's ban on gender-affirming care for minors

On January 19, 2022, NWLC, Lambda Legal Defense and Education Fund, Inc., and 20 additional organizations submitted an [amicus brief](#) to the Eighth Circuit in *Brandt v. Rutledge*. Our brief urged the appeals court to affirm the district court's decision to block Arkansas's discriminatory ban on gender-affirming care for minors.

VICTORY: On August 25, 2022, the Eighth Circuit [affirmed](#) the preliminary injunction blocking Arkansas's ban on gender affirming health care for minors, holding that the ban violates the U.S. Constitution by impermissibly discriminating on the basis of sex. On November 16, 2022, the Eighth Circuit denied the State's petition for a rehearing en banc.

VICTORIES IN 2021 AMICUS BRIEF CASES

In addition to the three wins noted above in our 2022 amicus cases, this year we also learned of important wins in many of our 2021 amicus cases.

- **L.B. v. U.S.A. (Mt. Sup. Ct.)** - Allowing claim to proceed against Indigenous woman who was raped by law enforcement officer

On August 16, 2022, the Montana Supreme Court issued a [decision](#) in favor of L.B., an Indigenous woman who was raped by a federal law enforcement officer under threat of being arrested and having her children taken away. NWLC, along with our partners the Roderick & Solange Macarthur Justice Center and Women's Law Project, led an [amicus brief](#) in support of L.B in October 2021 to [explain](#) that sexual assault by police officers is widely prevalent, especially among women of color, and is facilitated by the enormous power and authority that police wield.

- **Tucker v. Faith Bible Int'l (10th Cir.)** - Allowing employee's retaliation case to proceed instead of dismissing it based on ministerial exception

On June 7, 2022, the Tenth Circuit [denied](#) Faith Christian Academy's appeal, allowing Gregory Tucker's Title VII claim that he was fired in retaliation for organizing an assembly to address racist incidents at the school to proceed. The majority decision supports the arguments made in NWLC's [amicus brief](#) that courts [must](#) undertake a serious analysis before employees are deemed ministers. Thus, employers should not be able to rely solely on formulaic paperwork or handbooks to classify employees as ministers and thereby deny their critical workplace civil rights protections. We partnered with Quinn Emanuel Urquhart & Sullivan on this brief.

- **Strickland v. United States (4th Cir.)** - Recognizing constitutional workplace protections for federal judiciary employees

On April 26, 2022, the Fourth Circuit issued a historic [decision](#) recognizing, for the first time, the constitutional right of federal judiciary employees to work in an environment free from sexual harassment. NWLC filed an [amicus brief](#) in this case in August 2021, along with the Purple Campaign, Legal Momentum, and our pro bono counsel Wilkie Farr & Gallagher, on behalf of Caryn Devins Strickland—a former federal public defender who was subjected to pervasive sex discrimination at work, including sexual harassment and related retaliation, and denied basic constitutional rights when she sought justice. The district court had dismissed Strickland's case, but thanks to the Fourth Circuit's decision, some of her claims will proceed.

- **Dent v. Constellation New Energy (Ill. Sup. Ct.)** - Shielding survivor from retaliatory defamation suit

On April 21, 2022, the Illinois Supreme Court correctly [reversed](#) the Illinois Appellate Court and held that the employer could not be forced to reveal the identities of a survivor who reported sexual harassment by a vendor to her employer, a witness to the named harasser's conduct, and the investigator of the complaint. The decision is a win for survivors reporting sexual harassment and employers who seek to do the right thing by investigating complaints. We co-lead an [amicus brief](#) in this case in May 2021—along with Women Employed, ACLU-IL, and law firm partner DLA Piper—urging the court to reverse the troubling appellate court decision that could have made it easier for harassers to retaliate against those who report sexual harassment.

- **Balow v. Michigan State University (6th Cir.)** - Allowing reconsideration of Title IX challenge

On February 1, 2022, the Sixth Circuit [vacated](#) the lower court's decision, holding that the lower court had made several clear errors in its decision, consistent with the arguments in our May 2021 [amicus brief](#). We filed our brief in [support](#) of eleven members of the Michigan State University (MSU) women's varsity swim and diving team who brought a Title IX challenge to MSU's attempt to eliminate their team. As a result of the Sixth Circuit's decision, the lower court must now reconsider the plaintiffs' request for a preliminary injunction and must apply the correct standards this time in making its decision.

- **Hamilton v. Dallas Cty. (5th Cir.)** - Granting en banc review of Title VII decision

On October 13, 2022, the Fifth Circuit granted the plaintiffs' petition for rehearing en banc and vacated a Fifth Circuit panel's previous decision that had upheld the dismissal of nine female detention officers' Title VII complaint. NWLC, along with the ACLU Women's Rights Project, the ACLU of Texas, our pro bono partners at Katz, Marshall & Banks, and 41 organizations committed to women's and civil rights, filed an [amicus brief](#) in this case on May 21, 2021 [detailing](#) why the jail's scheduling policy is sex discrimination under Title VII. The Fifth Circuit's decision creates the possibility that the plaintiffs' claims will be revived and allowed to continue. The case is tentatively calendared for en banc oral argument in January 2023.