NATIONAL WOMEN'S LAW CENTER

Justice for Her. Justice for All.

DECEMBER 2024

National Women's Law Center 2024 Litigation Highlights

INTRODUCTION & SUMMARY

This has been a busy year for NWLC as we have represented individuals and organizations before state and federal courts, administrative agencies, and in impactful negotiations with schools, employers, and health care providers. Indeed, in 2024, NWLC brought four new enforcement actions before federal agencies, filed a novel federal lawsuit to protect access to emergency abortion care, took on three additional new legal representations, continued to prosecute our ten other pending matters, and submitted 25 amicus curiae briefs in courts across the country, pushing the law forward and centering those most impacted by pending cases. We also achieved two major victories in our class actions seeking equitable access to insurance coverage for fertility benefits for individuals in LGBTQ+ relationships. Litigation continues to be a vital tool wielded by NWLC to combat harmful laws and policies and advance gender justice nationwide.

As we enter 2025, we are bracing for the realities of a new presidential administration and the agenda it intends to implement, including what it means for our ongoing and future litigation. We know that despite the result of the presidential election, a majority of voters turned out in support of gender justice issues and do not want to see the advances we have made repealed. Millions of people, across all demographics, voted in support of reproductive freedom, affordable childcare, and an equitable economy—issues that NWLC will continue to defend and expand access to, including via litigation. We are prepared to use strategic litigation to resist attempts to roll back or undermine our rights . At the same time, we will demand that the courts use all of the legal resources available to work toward ending sex discrimination in schools, workplaces, and health care and coverage, as we continue to work toward creating a future where women, girls, LGBTQI+ people, and all people can thrive.

While it is always exciting to obtain a positive court ruling, settle a case in our clients' favor, or have a court cite our amicus brief, we know that each representation we take on is an opportunity to lift up the stories of the real people impacted by the law. These efforts are one part of our organization's collective work of driving the legal change that shifts the culture towards gender justice. Thank you for supporting NWLC's work across the organization.

NWLC CASES

EDUCATION

- ***Cobb County School District & Collier County School District*** **(Dep't of Educ., OCR)** - Challenging discriminatory book bans

  On May 13, NWLC filed two complaints with the U.S. Department of Education Office of Civil Rights alleging that book bans in Cobb County, Georgia, and Collier County, Florida, in combination with other discriminatory acts, created a hostile environment for LGBTQI+ students and students of color in violation of Title IX of the Education Amendments of 1972 (Title IX) and students of color in violation of Title VI of the Civil Rights Act of 1964 (Title VI). Both complaints told the stories of students and families impacted by these bans to highlight the ongoing harm of each school district's discriminatory censorship of books and learning materials that feature characters and authors of color and/or those who are lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+), as well as books that discuss race, racism, LGBTQIA+ identity, and discrimination.

  We argued that both public school systems systemically marginalized LGBTQIA+ students and students of color. Efforts to censor these books and learning material made students feel unsafe to be who they are at school, unsupported or in their identities, and unable see themselves reflected in what they learn at school. Classroom libraries and media centers have been decimated; students have been forced back into the closet; teachers and other school staff who seek to provide safe environments for students have been driven away from schools; incidents of bullying and harassment have been ignored; and there is a pall of fear over the educational environment for LGBTQIA+ students and students of color. We asked the federal government to take swift legal action to ensure that all students are safe to learn.

- ***Law School Title IX Violation*** **(Va.)** - Asserting pregnant student's rights under Title IX

  In July, NWLC was retained by a pregnant student at a Virginia law school. Her school had academically suspended her after refusing to give her the reasonable accommodation of grading a paper she submitted late because of severe pregnancy-related medical conditions. If the suspension stood, the student would not graduate on time and would lose a post-graduation judicial clerkship. The suspension had also already caused her to lose a summer internship with the federal government.

  NWLC sent the school a demand letter explaining that its conduct violated Title IX, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. On receiving the letter, the school agreed to immediately lift the academic suspension and grade our client's paper. Our client—who has now had her baby—was able to re-enroll for the fall semester. She is back on track to graduate on time and begin her clerkship.

REPRODUCTIVE RIGHTS & HEALTH

- ***BAGLY v. U.S. Department of Health and Human Services*** **(D. Mass.)** - Challenging Trump "Rollback Rule" undermining the Affordable Care Act's (ACA) nondiscrimination protections

  On March 19, plaintiffs, represented by NWLC, the Transgender Law Center, the Transgender Legal Defense & Education Fund, the Center for Health Law and Policy Innovation at Harvard Law School, and Hogan Lovells, filed a motion for summary judgment in a lawsuit challenging the first Trump administration's "Rollback Rule" on Section 1557 of the ACA. Plaintiffs asserted that the Rollback Rule violates the Administrative Procedures Act because it is arbitrary, capricious, and contrary to law, including the plain text of the ACA. Although plaintiffs filed the lawsuit in 2020, proceedings were halted in early 2022 after the Biden administration issued a new proposed Section 1557 rule, promising to make significant revisions addressing the issues in plaintiffs'

case. But nearly three years later, without a new final rule, and while facing ongoing harm and the clear threat that another federal court would quickly enjoin any new rule, plaintiffs called on the U.S. District Court for the District of Massachusetts to vacate the discriminatory rule and clarify the protections of Section 1557 once and for all.

On April 26, the Biden administration published its new final rule. Given the new rule, the defendants moved to stay summary judgment briefing pending resolution of briefing on the issue of mootness. Plaintiffs opposed dismissal—highlighting that, as feared, federal courts in Texas and Florida had issued preliminary injunctions staying the effective date of key portions of the new rule, including its revised definition of sex. The district court held oral arguments on November 7. Unfortunately, on December 6, the court dismissed the lawsuit as moot. Plaintiffs are considering whether to appeal.

- ***Berton v. Aetna Inc*** **(N.D. Cal.)** - Advocating for equal access to insurance coverage for fertility treatments

  On February 29, the U.S. District Court for the Northern District of California denied Aetna's motion to dismiss our class action challenging the health insurance company's definition of infertility for discriminating against LGBTQ people who can become pregnant, a significant victory for our client. Aetna's definition of infertility required individuals who can become pregnant in same-sex relationships to undergo six or twelve rounds (depending on age) of costly and burdensome intrauterine insemination (IUI) to qualify for any fertility benefits. (And for many people whose plans don't cover IVF, that means they have to pay for a year of IUI just to get coverage for more rounds of IUI.) In contrast, Aetna merely required individuals in opposite-sex relationships to represent, without any documentation, that they have been trying to become pregnant via heterosexual sex for six or twelve months to access the same benefits.

  NWLC, alongside law firms Katz Banks Kumin LLP and Altshuler Berzon LLP, filed suit in April 2023, demanding damages for a California-wide class as well as nationwide injunctive relief. Aetna moved to dismiss our case in July, arguing that the Plaintiff's employer needed to be added to the case—which would thwart our ability to pursue a class action—and that its policy might have a disparate impact on women in same-sex relationships but that it was not intentionally discriminatory. NWLC and Altshuler Berzon attorneys argued against Aetna's motion before the court in October 2023. Ultimately, the district court sided with the Plaintiff on both arguments, holding that Aetna could provide the Plaintiff with meaningful relief on its own and that she had plausibly alleged that Aetna's definition of infertility is "facially discriminatory because it imposes an unequal burden on same-sex couples as compared to opposite-sex couples."

  After propounding discovery, Plaintiffs engaged in mediation with Aetna in October 2024. Negotiations are ongoing, and the parties have asked the Court to extend all case deadlines by four months to further progress on those efforts.

- ***Blackmon v. Missouri*** **(Mo.)** - Challenging Missouri's abortion ban under the State's Establishment Clause

  NWLC, Americans United for Separation of Church and State, and the law firm Arnold & Porter challenged Missouri's total abortion ban and some other abortion restrictions under the state Constitution's establishment clauses. The plaintiffs were 13 clergy of various faiths who support access to abortion as a matter of religious belief, challenging the narrative that people of faith are uniformly opposed to abortion rights. On June 14, the state trial court judge issued a judgment on the pleadings, holding that the challenged provisions did not violate the separation of church and state. The court gave little consideration to the blatantly religious comments made by the legislators who passed the challenged provisions. We appealed the decision directly to the Supreme Court of Missouri.

  In November 2024, Missourians passed Amendment 3, which enshrined abortion rights in the state's

constitution. As a result, on November 21, plaintiffs dismissed this case, since Amendment 3 invalidates the challenged abortion restrictions.

- ***California v. Providence Saint Joseph*** **(Humbolt Cnty. Cal. Sup. Ct.)** - Protecting access to emergency abortion care at religious hospitals

  On September 30, the Attorney General of California filed a complaint and request for a preliminary injunction against Providence St. Joseph, a Catholic hospital in rural northern California, due to the hospital's failure to provide emergency care to Anna Nusslock as required by state law. Ms. Nusslock was suffering a miscarriage after premature rupture of membranes and needed an abortion to protect her life and health. NWLC, alongside local firm Janssen Malloy, is representing the interests of Ms. Nusslock as the complaining witness as she navigates the demands of participating in the case, which has received significant media attention.

  Thankfully, Ms. Nusslock was able to receive life-saving care by driving to a nearby hospital, but that hospital shut down its labor and delivery ward in October. This closure has left people capable of pregnancy in this geographic area without any health care facility within several hours' drive that is willing to provide medically necessary and legally required emergency abortion care.

  On October 29, Providence agreed to a preliminary injunction requiring it to fully comply with the State's Emergency Services Law while the litigation proceeds. Under the agreement, the hospital will allow its treating physicians to terminate a patient's pregnancy if not doing so would seriously risk the patient's health. The hospital also agreed not to transfer a patient to another facility without first providing emergency stabilizing care, including abortion care if that is what a patient needs.

  The hospital admitted no liability under the stipulation, however, and it did nothing to address the harms to Ms. Nusslock or other patients that the State's court filings allege Providence also refused to treat. NWLC is investigating private claims Ms. Nusslock may have against the hospital or its parent company.

- ***Costales v. CVS Health*** **(Cal.)** - Addressing pharmacy refusals

  On June 6, NWLC, in partnership with the law firm Fenwick & West LLP, submitted a legal demand letter to CVS Health regarding one of its San Diego pharmacies' unlawful refusal to dispense misoprostol to Angela Costales, medication that she needed after experiencing a miscarriage. The letter seeks compensation for Ms. Costales and demands that CVS take immediate steps to ensure that no patient is denied their lawfully prescribed medication in the future, including by training its employees on their legal obligations.

  NWLC is currently in settlement negotiations with CVS.

  Additionally, NWLC created a new intake page for other individuals to share their experiences after experiencing wrongful refusals to fill prescriptions related to reproductive health care, including birth control.

- ***Employment Discrimination Against an Abortion Provider*** - Protecting abortion providers from discrimination

  In 2024, NWLC successfully negotiated a settlement on behalf of an abortion provider whose rights were violated by their employer.

  NWLC provides information and support to abortion providers who face discrimination and barriers from their employers or schools. Occasionally, NWLC can provide or facilitate legal representation on behalf of an abortion provider who faces this kind of discrimination. Such representation may, for example, include alleging claims that the employer violated the provider's rights under the First Amendment, Title VII, the

federal Church Amendments (which protect health care personnel against employment discrimination based on the fact that they have provided or are willing to provide abortion), or analogous state law.

- ***Farmer v. University of Kansas Hospital Authority* (D. Kan.)** - Protecting access to emergency abortion care

  On July 30, NWLC, alongside Cohen Milstein Sellers & Toll PLLC and Dugan Schlozman LLC, filed a first-of-its-kind federal lawsuit against the University of Kansas Hospital Authority on behalf of Mylissa Farmer.

  NWLC has been working with Ms. Farmer since shortly after she was denied a life-saving emergency abortion for pregnancy complications in August 2022. Last year, CMS issued notices of deficiency against the hospitals that denied Ms. Farmer care in response to our complaint that this denial violated the Emergency Medical Treatment and Labor Act (EMTALA). With this new lawsuit, we are asking a federal court to declare that the Kansas hospital violated EMTALA and Kansas law by turning Ms. Farmer away and to grant her financial compensation for the harm she suffered.

  This is the first post-*Dobbs* lawsuit we are aware of in which an individual who was denied emergency abortion care is seeking to vindicate their own rights under EMTALA. In addition to the EMTALA claim, the lawsuit alleges the hospital violated Kansas nondiscrimination law when it turned Ms. Farmer away because of her pregnancy-related condition. Our complaint makes clear that when a hospital offers emergency care to all but turns away pregnant people in crisis, that is sex discrimination, plain and simple.

  University of Kansas Hospital Authority moved to dismiss our complaint on August 30. We filed our opposition on October 9, and the Authority replied on November 11, completing briefing. The district court denied the Authority's motion to stay discovery pending its resolution of the motion to dismiss, so we are proceeding with discovery while we await a ruling on the motion to dismiss.

  In 2023, NWLC also filed a complaint with the U.S. Department of Health and Human Services Office for Civil Rights on Mylissa's behalf, explaining that the hospitals discriminated against her on the basis of sex in violation of Section 1557 of the ACA, the first federal law to broadly prohibit sex discrimination in health care, by denying her the care necessary to preserve her life and health. This complaint remains pending.

- ***Goidel v. Aetna Life Insurance Co.* (S.D.N.Y.)** - Advocating for equal access to insurance coverage for fertility treatments

  We obtained another significant victory this year in our New York LGBTQ fertility coverage class action: On October 8, the U.S. District Court for the Southern District of New York granted the parties' joint motion for preliminary approval of their settlement ag reement in a class action against Aetna over claims of discriminatory practices faced by LGBTQ+ policyholders seeking fertility treatment. Plaintiffs, represented by NWLC and Emery Celli Brinckerhoff Abady Ward & Maazel LLP, alleged that Aetna's fertility coverage policies (described above) violated Section 1557 of the ACA, as well as state and city law for some types of insurance plans.

  Under the proposed settlement, Aetna denied liability, but agreed to implement the following policy changes:

  - Aetna will modify its clinical policy to be consistent with recent American Society for Reproductive Medicine guidelines, whereby all eligible plan members will have equal access to artificial insemination benefits regardless of sexual orientation
  - Aetna will introduce a new standard health benefit plan for self-funded and fully insured plans that includes artificial insemination as a benefit for all Aetna members regardless of sexual orientation, and Aetna will seek to incorporate an indemnification clause into any future contract to administer a self-funded health benefit plan for which the plan sponsor chooses to continue to require individuals with a same sex partner

who can become pregnant to pay more for infertility services than those with a sperm-producing partner.

- Aetna will revise its requirements for progressing to IVF to ensure the treatment is more accessible for LGBTQ+ individuals.

Pursuant to the proposed settlement, Aetna will also compensate class action members (i.e., members of certain New York commercial insurance plans who were or would have been denied reimbursement for artificial insemination) as follows:

- Aetna will create a $2 million common fund to pay additional compensation to each class member.
- Aetna will re-process eligible insurance claims to reimburse class members for their out-of-pocket artificial insemination cycles, up to the plan limits.
- Aetna will also separately pay all the costs of the administrator and special master who will allocate the common fund.

NWLC, Emery Celli, Aetna, and our settlement administrator Atticus recently began notifying potential class members and helping them to complete the paperwork necessary to join the class and receive compensation for the harms that they have suffered.

The district court is set to conduct a Fairness Hearing on October 10, 2025. Shortly after that hearing, NWLC and Emery Celli anticipate moving for final approval of this historic settlement.

- ***Planned Parenthood Federation of America v. Azar*** **(S.D.N.Y.)** - Challenging refusals of care

On January 9, the Biden administration finalized a rule that rescinded almost entirely the most harmful parts of the first Trump administration's refusal-of-care rule, which purported to give broad new rights to health care workers to put their personal beliefs ahead of patient care and allowed almost anyone in the health care field to refuse to provide basic health care services and information, including in emergencies. NWLC challenged the Trump-era rule, alongside Planned Parenthood Federation of America, Democracy Forward Foundation, and Covington & Burling, in June 2019. In November 2019, the district court struck down the rule in its entirety, concluding that the rule was unlawful and that the Trump administration's justifications for the rule were patently false. After the Biden administration issued a notice of proposed rulemaking rescinding the most harmful aspects of the rule in accordance with the court's decision in our litigation, NWLC led the reproductive rights, health, and justice coalition's efforts in the regulatory comment period, including coordinating a coalition sign-on comment, engaging members of Congress, and driving comments from NWLC supporters through a public portal.

The case remains open pending resolution of Plaintiffs' petition for attorneys' fees and costs.

WORKPLACE JUSTICE

- ***Hernandez v. Walmart*** **(EEOC)** - Defending pregnant workers' rights

On October 1, NWLC filed a charge with the Equal Employment Opportunity Commission (EEOC) on behalf of a former Walmart employee, Corrissa Hernandez, and all similarly situated employees.

Ms. Hernandez, a mother of two, learned she was pregnant shortly after getting hired as a cashier at an Ohio Walmart store. After working a few shifts, Ms. Hernandez requested accommodations for her high-risk pregnancy, based on her doctor's recommendations: she asked for a stool to sit on while working and to change from a full-time to a part-time position. Walmart fired Ms. Hernandez the same day she made those requests and told her to reapply when she was no longer pregnant. Ms. Hernandez also knows of at least one other pregnant Walmart employee who left because Walmart was mistreating her.

Under the Pregnant Workers Fairness Act (PWFA), employers are required to provide workers who have known limitations related to pregnancy, like Ms. Hernandez, reasonable accommodations so long as they do not impose an undue hardship. In our charge, we assert that Walmart failed to comply with the PWFA and Title VII of the Civil Rights Act's prohibition on sex discrimination, as well as the Americans with Disabilities Act's prohibition on disability discrimination. In addition to seeking relief for herself, Ms. Hernandez also seeks to ensure that Walmart, which employs millions of workers and is one of the country's largest employers, provides pregnant and disabled workers with reasonable accommodations as required by law. The EEOC is currently investigating.

- ***REAL Women in Trucking et al. v. Stevens Transport* (EEOC)** - Fighting obstacles to women working in male-dominated fields

  This year, NWLC and co-counsel Peter Romer-Friedman proceeded through the EEOC investigative process related to the class action hiring discrimination charge we filed on behalf of REAL Women in Trucking, a non-profit organization that advocates for women truck drivers, and three women truck drivers against Stevens Transport, one of the nation's largest refrigerated trucking companies. Our charge alleges that Stevens Transport routinely refuses to hire women truck drivers, or substantially delays hiring them, because of its same-sex training policy. In January 2024, Stevens filed a responsive position statement, and NWLC and co-counsel responded in February by filing a detailed rebuttal statement.

  On April 19, NWLC filed another charge with the EEOC on behalf of a new client who was denied opportunity to become a truck driver with Stevens Transport because of her sex. Our new client first applied for a truck driver position with Stevens Transport over a year ago, but since that time, although she has reached out repeatedly, Stevens has told her many times that her application is pending and that she is on a waiting list because of a lack of trainers for women drivers. As recently as April 2024, Stevens represented to our client that they had no trainers available to train women drivers like her. The EEOC is currently investigating.

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

  On April 26, NWLC filed a motion for summary judgment on behalf of our client, Dr. Yvonne Schulman, arguing that her former employer, Zoetis, Inc., clearly violated the federal Equal Pay Act, the New Jersey Law Against Discrimination, and the New Jersey Equal Pay Act when it paid a man almost twice as much as her to do the same job. Zoetis cross-moved for summary judgment, arguing that it did not violate the law. We now await a hopefully path-breaking decision as to whether it violates the federal Equal Pay Act, and its New Jersey analogues, for a company to pay a man more than a woman for the same job because the man's prior salary was higher.

ADDITIONAL MATTERS

We have two additional ongoing cases challenging regulations promulgated during the first Trump administration: *Irish 4 Reproductive Health v. U.S. Department of Health and Human Services* (N.D. Ind.), our lawsuit challenging rules creating sweeping religious and moral exemptions to the ACA's contraceptive coverage requirement, 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, and *Victim Rights Law Center v. Cardona* (D. Mass.), 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. Both cases have been paused in light of rulemaking by the Biden administration.

AMICUS BRIEFS

U.S. Supreme Court

- ***Idaho v. United States* and *Moyle v. United States* (SCOTUS)**

NWLC, with support from Democracy Forward and Cohen Milstein Sellers & Toll PLLC, coordinated a broad and diverse coalition in filing 27 amicus briefs to the U.S. Supreme Court on March 28, in support of the United States in the consolidated cases *Idaho v. United States* and *Moyle v. United States*. This coalition included major medical groups like the American Medical Association, American College of Obstetricians and Gynecologists, the American College of Emergency Physicians, and the American Hospital Association, physicians and patients with devastating first-hand accounts of the harm from inaccessible emergency abortion care, 258 Members of Congress, former HHS officials, states and cities, prosecutors, legal and public health scholars, businesses, advocates for disability rights, survivors of intimate partner violence, abortion funds, and more.

These cases started as a federal government challenge to Idaho's total abortion ban to the extent it conflicts with EMTALA. In the lawsuit, the Department of Justice argued that Idaho's law—which criminalizes nearly all forms of abortion except those that are "necessary to prevent the death of the pregnant woman," and in some cases of rape and incest—is narrower than EMTALA, which requires hospitals to provide emergency abortion care when needed to stabilize a patient whose health is in serious jeopardy, even if that care is not clearly "necessary" to prevent their "death." The federal government sued to block the law to the extent it criminalizes care required by federal law.

A lower court blocked that law in August 2022, and in January 2024, the Supreme Court took the extraordinary step of bypassing the U.S. Court of Appeals for the Ninth Circuit, deciding to hear the case during the 2023–2024 term and allowing Idaho's abortion ban to go fully into effect pending the Court's decision.

The briefs that NWLC coordinated outlined the devastating, lifelong consequences of allowing states to eliminate federal protections for emergency abortion care under EMTALA, as well as the broader implications for bedrock principles of federalism.

NWLC also partnered with Cohen Milstein, In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum, and the National Latina Institute for Reproductive Justice on our own amicus brief that 98 additional organizations joined, including leading civil rights organizations such as the NAACP Legal Defense Fund and the Leadership Conference on Civil and Human Rights, four labor unions (SEIU, NEA, AFT, and AFSCME), other gender justice and reproductive rights and justice organizations, and many others. Our brief explained the devastation that would be wrought by a holding that states can carve pregnant patients out of the full scope of EMTALA's protections. We explained that EMTALA's plain text has always required hospitals to provide emergency abortion care when necessary to stabilize a pregnant patient's emergency medical condition, and a decision contrary to that would deepen the United States' maternal health crisis, particularly for Black, Indigenous, immigrant, rural, and low-income communities. The brief urged the Court to reject Idaho's novel arguments, which would decimate treatment options for pregnant patients experiencing emergencies and further accelerate the exodus of health care providers from areas already considered pregnancy-care deserts, making pregnancy in this country even more dangerous than it already is.

Oral arguments were heard on April 24, and NWLC led the empowering and inspiring rally before the Supreme Court that day, featuring remarks from Fatima Goss Graves and our client Mylissa Farmer.

On June 27, the U.S. Supreme Court dismissed *Idaho v. United States* and *Moyle v. United States* as improvidently granted. Critically, the Court allowed the preliminary injunction against Idaho's abortion ban to the extent it conflicts with EMTALA to go back into effect while the litigation proceeds through the lower courts, allowing doctors to resume, at least for now, performing life- and health-saving abortions . (On June 26, the Supreme Court inadvertently posted a draft version of the opinions to its website. NWLC responded to this accidental preview in a statement.)

The case has since been remanded to the U.S. Court of Appeals for the Ninth Circuit for a hearing *en banc*. On October 22, NWLC and co-counsel Cohen Milstein filed an amicus brief in support of the United States in partnership with In Our Own Voice: National Black Women's Reproductive Justice Agenda, Indigenous Women Rising, National Asian Pacific American Women's Forum, National Latina Institute for Reproductive Justice, and 64 additional organizations. The brief presents largely the same arguments as the brief we filed to the U.S. Supreme Court.

- ***Alliance for Hippocratic Medicine v. FDA* (SCOTUS)** - Supporting access to medication abortion

On January 30, NWLC joined an amicus brief with 237 reproductive health, rights, and justice organizations, as well as other organizations with a strong interest in access to reproductive health care, urging the Supreme Court to reverse the Fifth Circuit's decision in Alliance for *Hippocratic Medicine v. U.S. Food & Drug Administration*. If upheld, this dangerous and unprecedented decision would have significantly restricted access to mifepristone, one of the medications in a two-drug protocol that is now used in over half of all abortions in the United States. The court's decision also had the potential to undercut the FDA's expertise by reimposing unnecessary and burdensome barriers to accessing mifepristone, such as in-person dispensing requirements and limitations on the types of medical professionals who can become certified prescribers. The amicus brief debunked the anti-abortion junk science relied upon by the Fifth Circuit, explaining that mifepristone is safe, effective, widely used, and has been critical to filling the gaps in abortion care for the most marginalized communities.

On June 13, the U.S. Supreme Court ruled that the Alliance for Hippocratic Medicine did not have standing to challenge the FDA's approval of mifepristone, leaving access to this medication unchanged—for now. However, in October, the States of Missouri, Kansas, and Idaho filed an amended suit against the FDA in the U.S. District Court for the Northern District of Texas, reviving claims to restrict access to mifepristone, so this battle is far from over.

- ***City of Grants Pass v. Johnson* (SCOTUS)** - Protecting the rights of unhoused LGBTQ+ people

On April 3, NWLC joined the Center for Constitutional Rights, Transgender Law Center, National Center for Lesbian Rights, Make the Road New York, and 41 other organizations in filing an amicus brief to the U.S. Supreme Court in *City of Grants Pass, Oregon v. Johnson*. The brief argued that this case has a direct impact on LGBTQIA+ people because of the disproportionate rates of homelessness that LGBTQIA+ people, especially trans people of color, experience due to bias and discrimination.

On June 28, the Court ruled that it is constitutional to fine, arrest, or jail people experiencing homelessness for simple acts of using survival items like a blanket or a pillow in a public space when no alternative shelter is available. NWLC's Director of Housing Justice, Sarah Hassmer, released a statement in response to the court's disturbing decision.

- ***Lackey v. Stinnie* (SCOTUS)** - Protecting civil rights plaintiffs

On August 12, NWLC joined the Lawyers' Committee for Civil Rights Under Law and seventeen other organizations in an amicus brief submitted to the Supreme Court in *Lackey v. Stinnie* for the 2024–2025

term. The Lawyers' Committee and Dechert LLP coauthored the brief, which argues that the Court should uphold the Fourth Circuit's en banc ruling that civil rights plaintiffs who obtain judicial relief in non-final form should be eligible for prevailing-party status and recovery of attorney's fees under 42 U.S.C. § 1988. As the brief explains, the availability of Section 1988 fee awards is critical to enabling civil rights plaintiffs to obtain counsel and vindicate their rights in court. Moreover, a contrary ruling would enable defendants to strategically moot cases to avoid paying attorneys' fees even when the plaintiff has obtained meaningful judicial relief via a preliminary ruling on the merits.

- ***United States v. Skrmetti* (SCOTUS)** - Defending minors' access to gender-affirming care

  On August 30, NWLC joined over a dozen legal scholars on an amicus brief before the Supreme Court in *U.S. v. Skrmetti*, a case for the 2024–2025 term challenging Tennessee's ban on gender-affirming care for transgender youth. The brief was authored by the law firm Hogan Lovells and antidiscrimination law scholar Jessica Clarke, with extensive input from our team. It argues that the ban, which conditions people's access to care on their sex, discriminates on the basis of sex and so is subject to heightened scrutiny under the Equal Protection Clause.

  Our brief asks the Court to overturn the Sixth Circuit's decision, which refused to apply heightened scrutiny to this ban. The Circuit Court claimed that mere rational basis review applied because (1) this law denied care to both men and women and (2) it was based on purported "biological" differences between sexes. Our brief explains that this reasoning would create broad, unsupported exceptions to searching judicial review that run afoul of half a century of sex-equality jurisprudence and threaten core principles of antidiscrimination protections.

  This brief encapsulates several core values that NWLC aims to apply to its work—that attacks on trans people threaten gender justice broadly, that purported biological differences are not destiny, and that the years of progress we've made on advancing gender equality must not be eroded.

Other Courts

EDUCATION

- ***Alabama v. U.S. Secretary of Education* (11th Cir.); *Arkansas v. U.S. Secretary of Education* (8th Cir.); *Kansas v. U.S. Department of Education* (10th Cir.); *Louisiana v. U.S. Department of Education* (5th Cir.); and *Tennessee v. Cardona* (8th Cir.)** - Defending trans students' rights under Title IX

  In 2024, NWLC filed a series of amicus briefs defending the Biden administration's Title IX regulations. Beginning on August 13, NWLC, together with Democracy Forward and 41 additional organizations dedicated to gender justice, filed an amicus brief in the Eighth Circuit in *Tennessee v. Cardona*. In this case, six states, including Tennessee, challenged the new Title IX rule, arguing that it wrongly clarified that sex discrimination includes discrimination based on gender identity, and that Title IX does not require schools to protect the rights of transgender and nonbinary students to access restrooms and locker rooms consistent with their gender identity.

  As the brief explains, the Rule provides, among other things, that the scope of prohibited sex discrimination under Title IX includes discrimination based on sexual orientation and gender identity. Schools must therefore permit transgender students to use school facilities, such as locker rooms and restrooms, consistent with their gender identity. In challenging the Rule, the brief argues, the plaintiffs drew on baseless fears and stereotypes to conjure up the specter of harm to the privacy and safety of cisgender students, when the reality is that no such threat exists. In fact, available data reflects that it is *transgender* students who are most

at risk when schools do not permit them to use facilities that align with their affirmed gender, while the mere presence of transgender students in gender-aligned spaces presents no credible threat to their cisgender peers.

On September 3 and 4, NWLC and Democracy Forward coauthored similar amicus briefs in two other cases challenging the Biden administration's Title IX regulations: *Kansas v. United States Department of Education* in the Tenth Circuit and *Louisiana v. United States Department of Education* in the Fifth Circuit. On October 28, NWLC and Democracy Forward submitted another amicus brief making similar arguments to the Eleventh Circuit in *Alabama v. U.S. Secretary of Education*, which involves a similar challenge to the Title IX regulations. And most recently, on November 25, NWLC submitted another amicus brief in *Arkansas v. U.S. Secretary of Education*, yet another challenge to the Title IX regulations in the Eighth Circuit.

To date, no Circuit Court has issued a final ruling on the regulations.

- ***Doe v. Alpena Public School District* (Mich.)** - Protecting students from peer harassment

  On January 31, NWLC submitted an amicus brief, with support from local counsel Johnson Law, to the Michigan Supreme Court in *Doe v. Alpena Public School District* in support of Jane Doe, who was in fourth grade when she was sexually assaulted by a classmate. Her school did not take sufficient action to keep her safe, and she ultimately transferred to a private school.

  The case asked the Michigan Supreme Court to decide whether Michigan's primary antidiscrimination law recognized claims for student-on-student harassment and, if so, what the standard for actionable harassment should be. For decades, Michigan courts have applied a common-sense standard for workplace coworker harassment cases brought under its state law. Jane Doe asked the Court to apply that standard—which is the standard used by the majority of states and territories in their education statutes and is similar to the standard used by the U.S. Department of Education for nearly 30 years before the now-rescinded Trump Title IX rules went into effect — to cases involving student harassment. However, the school district argued that the federal Title IX litigation standard, which NWLC and our partners have long criticized for being overly stringent against student victims, should apply.

  NWLC's brief explained that student-on-student harassment is highly prevalent, but too often schools ignore or even punish victims instead of supporting them. We shared examples of how the Title IX litigation standard has foreclosed countless student victims of sex, race, and disability harassment from obtaining relief in the federal courts and asked the Michigan Supreme Court not to import this harsh standard to the state's courts.

  On July 29, the Michigan Supreme Court decided the case on an issue we had not briefed. It held that the state's civil rights law does not provide a cause of action against an educational institution for student-on-student sexual harassment under a vicarious-liability theory. The court remanded for the intermediate appellate court to decide whether the plaintiff stated a claim against the school for direct liability for the harassment.

- ***Gaines v. NCAA* (N.D. Ga.)** - Protecting the rights of transgender women to play sports with their peers

  On May 6, NWLC sought intervention in *Gaines v. NCAA*, an action brought by anti-trans extremists who are trying to force a nationwide blanket ban that will exclude all trans women from NCAA college sports, regardless of where they're from, what sport they play, and how much their college and teammates may want to welcome them on the team. The plaintiffs also seek to ban trans women from using restrooms and locker rooms that align with their gender identity and to completely erase the recorded existence of trans women as NCAA athletes. In support of these radical requests, the plaintiffs claim that such relief is needed to protect the rights of cisgender women. NWLC, represented by ACLU, ACLU of Georgia, and Cooley LLP, sought to

intervene as a defendant in the matter and asked the district court to dismiss the case.

On November 1, the court denied NWLC's motion to intervene based on its conclusion that the NCAA would adequately defend its policies and that allowing NWLC to intervene would delay the case. The court said that it was expressing no opinion as to the validity of the issues NWLC raised, and it opined that NWLC could move to participate as amicus curiae. NWLC therefore filed an amicus brief on November 15 , making the arguments in support of dismissal that it would have made as intervenor. We explained that the plaintiffs generally lack standing to sue, that they profoundly misunderstand Title IX and the Fourteenth Amendment, and that their meritless claims should be dismissed. We await a decision on the motion to dismiss.

WORKPLACE JUSTICE

- ***Cheung v. Howard Hughes Medical Institute* (Md. Ct. App.)** - Protecting claims of intersectional discrimination

  On September 3, NWLC, with support from pro bono law firm partners at Quinn Emanuel, filed an amicus brief with the Appellate Court of Maryland in *Cheung v. Howard Hughes Medical Institute* (HHMI) in support of Dr. Vivian Cheung, an Asian American molecular biologist and pediatric neurologist. After Dr. Cheung was diagnosed with a rare genetic disorder, HHMI denied her continued research funding, and Dr. Cheung filed claims of disability, gender, race, and national origin discrimination. A Montgomery County Circuit Court judge declined to let all but Dr. Cheung's disability claim proceed. Our amicus brief explains that claims based on a single protected characteristic often fail to capture the distinctive harms of intersectional discrimination. We point out that Title VII recognizes intersectional claims and that Maryland courts have consistently interpreted state and local anti-discrimination laws in accordance with Title VII. Our brief also discusses how Asian American women face intersectional biases that are specific to, and exacerbated by, the combination of identities in their workplaces. The brief argues that Asian Americans with disabilities face unique forms of oppression at the intersection of multiple marginalized identities. Thus, we argue, the appellate court should reverse the lower court's dismissal of Dr. Cheung's claims of gender, race, and national origin discrimination.

- ***Lange v. Houston County* (11th Cir. en banc)** - Protecting trans employees' access to insurance coverage for gender-affirming care

  On October 30, NWLC, together with the ACLU and Pride at Work, submitted a motion for leave to file an amicus brief to the *en banc* Eleventh Circuit in *Lange v. Houston County*. This case is about Houston County's employee health insurance plan, which generally covers medically necessary procedures but excludes coverage for "sex change surgery" and drugs for such surgeries. Plaintiff Anna Lange, a transgender Houston County employee, challenged this exclusion, arguing, among other things, that the exclusion facially violates Title VII. She won this claim at the district-court level, and, after NWLC joined an amicus brief in support of the district court's decision, an Eleventh Circuit panel affirmed over a dissent. The Eleventh Circuit then decided to rehear the case *en banc*.

  Our brief explains that, under the Supreme Court's decision in *Bostock v. Clayton County*, the County's "sex change surgery" exclusion violates Title VII's prohibition on sex discrimination because it uses an employee's sex assigned at birth to decide whether a person receives an employer-provided benefit. The brief also explains that the County's and the panel dissent's arguments must fail because they are just reformulations of the Supreme Court's faulty reasoning in *General Electric v. Gilbert*—a decision Congress overturned by enacting the Pregnancy Discrimination Act of 1978.

- ***Restaurant Law Center v. U.S. Department of Labor* (5th Cir.)** - Protecting tipped workers

  On January 3, NWLC—for a second time—co-led an amicus brief in the Fifth Circuit in *Restaurant Law Center v. U.S. Department of Labor* to protect restaurant workers from wage theft and labor abuses. We were represented by Democracy Forward and joined by the Restaurant Opportunities Centers United and Economic Policy Institute. In an amicus brief in this matter in 2023, we had urged the Fifth Circuit not to pause the Department of Labor's final rule while the case proceeded. This second brief argued that DOL should win the case. We explained that DOL's rule addresses a common abusive practice—paying workers the $2.13 tipped minimum cash wage even when they have no opportunity to earn tips. This practice is particularly pernicious because many tipped workers already live near or below the poverty line, with poverty rates for tipped workers more than twice as high as rates for working people overall—and with female tipped workers, especially women of color, at a particular disadvantage. Our brief told the stories of workers whose employers abused the $2.13 tipped minimum wage and explained that these workers' stories support the rule and demonstrate that it is neither arbitrary nor capricious . Nonetheless, the Fifth Circuit ultimately invalidated the rule nationwide, holding that it was arbitrary and capricious.

- ***Tennessee v. EEOC* (E.D. Ark. and 8th Cir.) and *U.S. Conference of Catholic Bishops v. EEOC* (W.D. La.)** - Defending EEOC's PWFA regulation

  In 2024, NWLC has filed two amicus briefs defending newly promulgated regulations from the EEOC under the PWFA that make clear that employers have to reasonably accommodate employees for their pregnancy-related needs, including the need to access abortion care. Congress enacted the PWFA to fill gaps in federal law protecting pregnant workers and provide an explicit right to reasonable accommodations for workers affected by "pregnancy, childbirth, and related medical conditions," a term taken directly from the Pregnancy Discrimination Act of 1978 (PDA). The EEOC's regulations, which carry out Congress's intent in passing the PWFA, recognize that abortion—which has long been covered under the PDA—is also covered under the PWFA. The law therefore requires employers to provide reasonable abortion-related accommodations to workers who need them.

  Our briefs show how abortion is part of the full spectrum of pregnancy-related care and argues that blocking implementation of the EEOC's regulations would hurt workers and frustrate Congress's intent in enacting the PWFA. Blocking the regulations would also compound existing problems pregnant employees have to deal with—including diminished access to abortion after the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, 383 U.S. 745 (2022)—and exacerbate employers' confusion, ignorance, and foot-dragging around accommodating pregnant workers since the PWFA's enactment.

  On May 23, NWLC, the ACLU, and nineteen additional organizations dedicated to workers' rights and gender justice—including labor unions and legal advocacy organizations—filed an amicus brief before the U.S. District Court for the Eastern District of Arkansas in a case brought by a group of seventeen states, led by Tennessee and Arkansas, sued the EEOC, attacking the PWFA's requirement that employers reasonably accommodate employees who need abortion care and asking the court to eliminate the EEOC rule in its entirety. On June 14, the district court denied the states' motion for a preliminary injunction blocking the PWFA regulations. The judge determined that the states lacked standing to challenge the regulations' abortion-accommodation provision. The judge noted that our amicus brief was "helpful and appreciated." After the plaintiff states appealed to the Eighth Circuit, on August 30 NWLC, the ACLU, and twenty-three additional organizations dedicated to workers' rights and gender justice—including labor unions and legal advocacy organizations—filed an amicus brief in the court of appeals, again defending the PWFA regulations. We await a decision in this case.

  On June 10, NWLC, the ACLU, the ACLU of Louisiana, and 18 additional organizations dedicated to workers' rights and gender justice—including labor unions and legal advocacy organizations—filed an amicus brief to the U.S. District Court for the Western District of Louisiana in *U.S. Conference of Catholic Bishops v. EEOC*.

In this case, the U.S. Conference of Catholic Bishops, Catholic University of America, the Diocese of Lake Charles, and the Diocese of Lafayette, sued the EEOC seeking to block enforcement of the PWFA and the Final PWFA Rule with respect to abortion-related accommodations. They also ask the court, among other things, to declare that the EEOC's interpretation and enforcement of PWFA and Title VII are invalid under the Religious Freedom Restoration Act and the First Amendment.

This brief, like the *Tennessee v. EEOC* brief above, shows how abortion is part of the full spectrum of pregnancy-related care and argues that enjoining the EEOC's regulations would hurt workers and frustrate Congress's intent in enacting the PWFA. We also argued that the EEOC's rule does not violate the employers' religious freedom, as it explicitly recognizes existing religious defenses under current law, and that the PWFA does not limit the opportunities of religious employers to advance religious defenses in individualized proceedings that consider the facts of each case.

On June 17, the district court granted the plaintiffs a preliminary injunction blocking the abortion accommodations provision of the PWFA Final Rule, but only for workers in Louisiana and Mississippi and people who work for the religious employers who brought the lawsuit.

- ***Tennessee v. EEOC* (E.D. Tenn.) *and Texas and the Heritage Foundation v. EEOC* (N.D. Tex.)** - Defending enforcement guidance on workplace harassment

  In 2024, NWLC also filed two amicus briefs defending the EEOC's Enforcement Guidance on Harassment in the Workplace. The EEOC's Harassment Guidance explains and analyzes the federal legal standards for workplace harassment claims and serves as an important resource for workers, employers, and enforcement staff.

  On July 5, NWLC, the ACLU of Tennessee, and five other organizations dedicated to workers' rights and gender justice, in partnership with the law firm Weil, Gotshal & Manges LLP, filed an amicus brief before the U.S. District Court for the Eastern District of Tennessee in *Tennessee v. EEOC*. In this case, a group of 18 states led by Tennessee sued the EEOC, seeking to block the Harassment Guidance because of its recognition that Title VII's prohibition against sex discrimination includes discrimination on the basis of gender identity. Our brief emphasizes that the Harassment Guidance—and specifically its recognition that harassment based on gender identity is unlawful under Title VII—is critically important to protect transgender and nonbinary workers in light of the severe and widespread unlawful harassment they experience in the workplace. This harassment has a significant negative impact on the mental, physical, and financial wellbeing of transgender and nonbinary workers. Blocking the EEOC's Harassment Guidance would create confusion for workers and employers and undermine protections for transgender and nonbinary workers that are critically needed and required by law. We await a decision from the district court on the plaintiffs' motion for preliminary injunction.

  On November 20, NWLC and 15 other organizations dedicated to workers' rights and gender justice filed an amicus brief defending the Harassment Guidance before the U.S. District Court for the Northern District of Texas in *Texas v. EEOC*. In this case, the State of Texas and the Heritage Foundation sued the EEOC, similarly seeking to block the Harassment Guidance in its entirety because of its recognition that Title VII's prohibition against sex discrimination includes discrimination on the basis of gender identity. We await a decision here as well.

REPRODUCTIVE RIGHTS & HEALTH

- ***C.P. by and through his parents, Pritchard v. Blue Cross Blue Shield of Illinois* (9th Cir.)** - Defining the scope of the Affordable Care Act's Section 1557

  On June 20, NWLC and co-counsel Altshuler Berzon LLP filed an amicus brief on behalf of the Law Center and ten other organizations before the U.S. Court of Appeals for the Ninth Circuit in C.P. *by and through*

his parents, Pritchard v. Blue Cross Blue Shield of Illinois. Our brief clarifies the scope of Section 1557's protections against discrimination in health care: Section 1557 prohibits discrimination in all health programs and activities—including in activities related to employee health benefit plans, regardless of whether the health insurance company underwrites the plan itself or administers it for a self-funded plan sponsor, like an employer.

In this case, Lambda Legal represents C.P., a transgender young man seeking gender-affirming health care. However, his parents' employee health benefits plan contains a categorical exclusion of coverage for any care related to the treatment of gender dysphoria—a provision that plainly discriminates against plan members on the basis of their sex. Blue Cross Blue Shield of Illinois, a nonprofit health insurance company that serves as a third-party administrator for the parents' employer's health benefit plan, accepts federal funds. Yet BCBS Illinois argues that it should be allowed to administer health plans that contain discriminatory terms.

Our brief explains why the nondiscrimination provisions of the Affordable Care Act apply to health coverage providers, as well as why ERISA does not immunize third-party health coverage administrators from liability. Our brief also highlights the dramatic implications for hundreds of millions of people in the United States that would result if this insurance giant were permitted to continue flouting its obligations under Section 1557.

The Ninth Circuit will hear oral arguments in this case on January 17, 2025.

ADDITIONAL MATTERS

- ***Banks v. Hoffman* (D.C.)** - Supporting anti-SLAPP protections

  On April 15, NWLC authored an amicus brief, on behalf of DC Coalition Against Domestic Violence, Network for Victim Recovery of DC, and 13 other individual and organizational survivor advocates based in DC to the DC Court of Appeals in *Banks v. Hoffman*, urging the court to uphold DC's anti-SLAPP law. *Banks* is a defamation lawsuit filed against the American Psychological Association (APA) and the law firm Sidley Austin because they published a report concluding that some APA members had helped U.S. officials torture prisoners at Guantanamo Bay. In 2023, the DC Court of Appeals ruled against the APA and Sidley and struck down the discovery-pausing provision of DC's anti-SLAPP law. Then, the Court decided to re-hear the case, restoring the anti-SLAPP law for the time being. While *Banks* isn't a case about gender-based violence, the Court's decision will have profound implications for survivors throughout DC.

  Our amicus brief explains that gender-based violence is widely prevalent yet vastly underreported, and that survivors commonly face retaliation when they come forward. Abusers are increasingly using defamation suits and other SLAPPs to silence their victims, retaliate against them for speaking out, and further the cycle of abuse. Therefore, DC's anti-SLAPP law is essential to protecting survivors' ability to freely report and advocate against gender-based violence. In particular, the discovery-pausing provision protects survivors from the expense and re-traumatization of sharing private records with their abuser and submitting to hours of aggressive interrogation from their abuser's attorney. Our brief also features the stories of 2 NVRDC clients who successfully used DC's anti-SLAPP law when they were sued or threatened with a SLAPP after reporting gender-based violence.

- ***Cooper v. USA Powerlifting* (Minn.)** - Defending Minnesota human rights law

  On August 30, NWLC partnered with local counsel Nigh Goldenberg Raso & Vaughn, Covington & Burling, and 20 additional organizations dedicated to gender justice to file an amicus brief before the Minnesota Supreme Court in *Cooper v. USA Powerlifting*. This case was brought by Gender Justice on behalf of powerlifter JayCee Cooper; it challenged USA Powerlifting's categorical ban on sports participation by all trans women which was enacted specifically to exclude JayCee from competing in her sport in Minnesota. USA Powerlifting has sought to erode key protections in Minnesota's nondiscrimination law, which protects

women and LGBTQI+ people from enforcement of sex stereotypes in public spaces.

Our brief supports JayCee's request that the Minnesota Supreme Court uphold a positive initial decision by the trial court and reverse the incorrect appeals court ruling. We explain that policies designed to exclude trans women from sports and other aspects of public life are inherently linked to the reprehensible history of sex testing and body policing in women's sports, which has most severely harmed Black and brown women, intersex women, queer and transgender women, and women who are multiply marginalized. Our brief argues that the trial court correctly interpreted state public accommodations law in finding that JayCee and other LGBTQI+ women must be allowed to participate in the sports they love, and that businesses open to the public cannot legally exclude LGBTQI+ women. Our brief also explains how the Court of Appeals' flawed opinion embraces sex stereotypes to authorize overt discrimination against trans women and how this reasoning would harm all women, especially trans, intersex, and cis women and girls who do not conform to narrow stereotypes of womanhood. Finally, our brief illustrates the broad support for trans inclusion in sports by women in the athletic community. If you are interested in learning more about this case, here is a link to our blog post.

The Minnesota Supreme Court heard oral arguments in the case on December 3. We await a decision.

- ***Huntsman v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints* (9th Cir.)** - Combatting the extension of religious exemptions from anti-discrimination laws

  On April 5, NWLC, along with Interfaith Alliance, Lambda Legal, and the Sikh Coalition, filed an amicus brief before an *en banc* Ninth Circuit panel in this matter. The brief was authored by the Duke University School of Law Appellate Litigation Clinic.

  Over the course of many years, James Huntsman tithed millions of dollars to the Church, relying on representations that such funds would not be used to fund for-profit enterprises. He later learned from a whistleblower complaint to the IRS, however, that despite those repeated assurances, the Church was in fact using tithing money to fund a for-profit shopping mall in Salt Lake City and purposefully concealed the source of those funds from the public. When Huntsman sued for fraud, the district court accepted the Church's argument that the First Amendment—under a doctrine called ecclesiastical abstention, which prohibits civil courts from resolving issues of religious doctrine—allowed it to block the case from proceeding. Huntsman appealed, and on August 7, 2023, a panel of the U.S. Court of Appeals for the Ninth Circuit reversed the district court decision based on the ample evidence that the Church had fraudulently misrepresented the use of tithing funds. The Church was granted a rehearing *en banc*.

  Our amicus brief highlights that the Church seeks a dramatic expansion of ecclesiastical abstention, one that would close the courthouse door for religious adherents and non-adherents alike in many ordinary cases, including cases involving illegal discrimination. Our brief also explains how Huntsman's claim may be resolved without addressing questions of religious doctrine.

- ***Sabatini v. Knouse* (Mass. Ct. App.)** - Supporting anti-SLAPP protections

  On March 21, the NWLC and Legal Momentum, together with Holland & Knight LLP and 31 advocacy organizations, submitted an amicus brief in *Sabatini v. Knouse*. This appeal is about whether a reported harasser's defamation suit against a woman who reported him can be immediately dismissed under the Massachusetts Anti-Strategic Lawsuit Against Public Participation (Anti-SLAPP) law. Our brief first educates the court on the ubiquity of sexual harassment; that it is dramatically underreported, in part due to concern about retaliation; and that harassers are increasingly weaponizing defamation lawsuits precisely to retaliate against and chill reporting. Second, we discuss why statements made in the context of employers' sexual-harassment investigations, like the harassment report here, are—and need to be—protected under Massachusetts law.

VICTORIES AND OTHER UPDATES FROM EARLIER AMICUS BRIEF CASES

In addition to the wins noted above in our 2024 amicus cases, this year we also learned of important wins and other decisions in cases in which we filed amicus briefs in 2023 and earlier.

- ***Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* (Pa.)** - Expanding access to abortion care

  On January 29, the Pennsylvania Supreme Court issued a major decision in a challenge brought by abortion providers to the state's ban on Medicaid coverage of abortion, in which NWLC filed an amicus brief in October 2021 in support of the providers' standing to sue. The case alleges that the coverage ban discriminates on the basis of sex in violation of the state's Equal Rights Amendment and separately argues that the ban violates the state's Equal Protection Clauses. In a 219-page decision, the Pennsylvania Supreme Court held that the claim could go forward and overruled its prior precedent upholding the coverage ban under the Pennsylvania constitution.

  In holding that the providers had standing to sue, the Court held that the providers were injured in their own right by the coverage ban. Although the Court held that it was unnecessary to rely on third party standing doctrine (which allows third parties to sue to vindicate the rights of others), it still cited NWLC's brief, noting that we presented "a more ample view of the genuine obstacles faced by a woman who would otherwise seek to raise these claims on their own behalf," and it reiterated many of the arguments we raised in our brief throughout its analysis.

  Critically, the Court agreed that the coverage ban was a sex-based classification and held that it is subject to strict scrutiny under the state's ERA. The court not only agreed with the provider plaintiffs that the ban distinguishes based on sex because the Medicaid program "funds all male reproductive health procedures but not all female reproductive healthcare procedures," but also included a long discussion of how the coverage ban perpetuates historical sex-based stereotypes regarding women's maternal role. The Court thus squarely rejected the argument (which Justice Alito exhumed in *Dobbs* in discussing the federal Equal Protection Clause) that state laws regulating abortion are not sex-based classifications. The Court also rejected the argument that "biological differences between men and women justify" differential treatment, stating: "We conclude without hesitancy that there is no support in the text of [the state's ERA] for the idea that differential treatment among the sexes based on physical characteristics unique to one sex is permissible."

  The lower courts will now have the opportunity to decide in the first instance whether there is a fundamental right to abortion in Pennsylvania embedded in the right to privacy triggering strict scrutiny, and the issue should soon be back before the Pennsylvania Supreme Court.

- ***American Alliance for Equal Rights v. Fearless* (11th Cir.)** - Defending grants to Black-owned businesses

  On June 3, the Eleventh Circuit, reversing a lower court ruling , granted a preliminary injunction preventing Fearless Fund from administering its contest giving grants to Black women entrepreneurs. This case involved a challenge by an Ed Blum-backed organization to the Fearless Foundation's Fearless Strivers Grant program, which had a mission "to bridge the gap in venture capital funding for women of color founders." The program awarded $20,000 grants to small businesses owned by Black women, who often struggle to obtain funding in the U.S. venture capital market, despite their skills and promising businesses.

  On December 13, 2023, NWLC joined an amicus brief led by Lawyers' Committee for Civil Rights Under Law

in the Eleventh Circuit. Our brief argued that Congress enacted Section 1981 as a remedial measure during the Reconstruction era to secure the rights of newly emancipated Black citizens who historically had been, and were being, deprived of the rights to make and enforce economic contracts. Therefore, we argued, this challenge to the Fearless Strivers Grant program, a philanthropic, remedial program that awards grants to Black women-owned small businesses that have been disadvantaged in their ability to obtain funding, is contrary to Section 1981's congressional purpose and intent and should not have succeeded.

The court ruled 2-1 that the contest was substantially likely to violate Section 1981 of the Civil Rights Act, which prohibits race discrimination in making and enforcing private contracts. The majority failed to explain—and indeed cannot explain—how its holding is consistent with the text and purpose of that law. The parties subsequently settled the case on September 11, and as part of the settlement, Fearless Fund agreed to permanently close its existing grant program.

- ***Anderson v. Aitkin Pharmacy Servs.* (Minn. Ct. App.)** - Defending access to emergency contraception

  On March 18, the Minnesota Court of Appeals issued a major decision in our partner Gender Justice's sex discrimination lawsuit against Thrifty White Pharmacy for their pharmacist's refusal to dispense prescription emergency contraception to their plaintiff, Andrea Anderson. NWLC filed an amicus brief in support of Ms. Anderson in July 2023. The Court of Appeals determined that Ms. Anderson was entitled to judgment as a matter of law that the pharmacist had engaged in business discrimination and to a new trial as to whether the pharmacy violated the state's public-accommodations protections, and whether the pharmacist aided and abetted that violation. Crucially, the Court held that a refusal to dispense emergency contraception because it may interfere with a pregnancy is sex discrimination. The Court also determined that the Minnesota Human Rights Act sets no minimum threshold for adverse conduct that gives rise to a claim of public-accommodations discrimination, and thus the trial court erred by instructing the jury that it was required to find that the refusal to dispense emergency contraception caused Ms. Anderson a "material disadvantage" or "tangible change in conditions ."

  The defendant did not appeal. The case is set for a new trial in February 2025 to determine the remaining issues in this case: whether the pharmacist was acting as an agent of the pharmacy at the time of the discrimination, in which case the pharmacy will also be liable, as well as the amount of damages owed to Ms. Anderson.

- ***B.J.P. v. West Virginia State Board of Education* (Minn. Ct. App.)** - Protecting the rights of trans women and girls in sports

  On April 16, the U.S. Court of Appeals for Fourth Circuit held that West Virginia violated the Title IX rights of B.P.J., a middle school girl who is transgender and who challenged the state's anti-trans sports ban, H.B. 3298. The court recognized that West Virginia subjected B.P.J. to gender discrimination in school sports—which Title IX prohibits. It also held that the district court was wrong to say that West Virginia won on the Equal Protection Clause argument at this stage, and it sent the case back to the district court for further factual development.

  In April 2023, NWLC, along with our law firm partner Hogan Lovells US LLP and 52 organizations committed to gender justice, filed an amicus brief to the Fourth Circuit in this matter. After West Virginia enacted H.B. 3293 in April 2021, B.P.J., then just an 11-year-old who wanted to try out for her middle school's cross-country team, challenged the discriminatory law in court just to win a chance to try out for the team. Our amicus brief explained that anti-trans sports bans do not enhance participation in school sports for cisgender women and girls (contrary to state lawmakers' purported justifications for H.B. 3293), fail to address actual gender inequities in athletics, and are deeply connected to unlawful sex stereotypes that harm all girls and women. The harms of anti-trans sports bans especially fall on women and girls who are transgender, intersex

(who are born with natural variations in sex-linked characteristics), and Black and brown women, who are disproportionately targeted for body policing and scrutiny based on racialized stereotypes of femininity.

- ***Billard v. Charlotte Catholic High School* (4th Cir.)** - Fighting against the expansion of the ministerial exemption to anti-discrimination protections in the workplace

  On May 8, the Fourth Circuit Court of Appeals issued a decision in *Billard v. Charlotte Catholic High School*, reversing the district court and holding that Lonnie Billard, a drama and English teacher at a Catholic school, could be considered a minister. First the court relieved the school of their prior waiver of the ministerial exception. Then, applying the test articulated in *Our Lady of Guadalupe v. Morrissey-Berru*, the court held that because the school entrusted Mr. Billard with "vital religious duties" and made him a "messenger of its faith," he fell within the ministerial exception. There is some silver lining, as the opinion does not adopt the maximalist understanding of the ministerial exception and Title VII articulated by the school. That position would have deprived *all* employees at religious institutions of any protections against discrimination under Title VII. The court also did not go so far as to say that the ministerial exception can never be waived, simply that it should not have been considered waived in this instance.

  While the outcome is very disappointing, NWLC is deeply grateful for the bravery of Mr. Billard and is honored to stand alongside him. We also want to thank our pro bono partners at Debevoise & Plimpton LLP for its hard work on our brief, and the 47 advocacy organizations that joined us.

- ***Boyer v. U.S.* (Fed. Cir.)** - Ensuring effectiveness of Equal Pay Act

  The U.S. Court of Appeals for the Federal Circuit held that the Equal Pay Act applies equally to hiring inside and outside of the federal government and that reliance on prior pay, standing alone, could not be an affirmative defense to a prima facie case under the Equal Pay Act unless the government could prove that the prior pay itself was not based on sex. The court's opinion referenced NWLC's brief and our materials.

  On September 30, 2022, NWLC—along with our law firm partner the Federal Practice Group and 46 additional organizations committed to equal pay—filed an amicus brief to the U.S. Court of Appeals for the Federal Circuit in Boyer v. U.S. The lawsuit was brought under the Equal Pay Act by Dr. Leslie Boyer, a clinical pharmacist at the Department of Veterans Affairs (VA) who was paid less than her male colleague for the same job, even though she had seven years' more experience. The VA admits that it did not provide Dr. Boyer equal pay for equal work, but claims this is okay because it based the workers' pay on their previous salaries. The trial court dismissed Dr. Boyer's lawsuit, finding that the VA was allowed to rely on salary history to defend against sex-based inequality under the Equal Pay Act. Dr. Boyer appealed to the U.S. Court of Appeals for the Federal Circuit, asking the appeals court to reverse the trial court's decision and allow her equal pay claim to proceed.

  Our amicus brief explained why relying on salary history is not a legitimate justification for sex-based pay discrimination under the Equal Pay Act. That's because women—and particularly women of color—are systematically paid less than men across occupations and industries. Therefore, employers who rely on salary history to select job applicants and to set new hires' pay will often perpetuate existing disparities, directly undermining the purpose of the Equal Pay Act. A number of federal appeals courts have already decided that prior salary, particularly when it is the sole factor in compensation decisions, cannot be used as an affirmative defense under the Equal Pay Act. NWLC and our 46 partner organizations urged the appeals court to do the same by ruling in favor of Dr. Boyer and making clear that employers, including the federal government, cannot point to salary history to defend against pay discrimination.

- ***Chase v. Penney* (2nd Cir.)** - Advancing justice for survivors of sexual assault

  On July 1, the state of Connecticut passed a landmark law to standardize and improve the way law enforcement officers treat victims of sexual assault. The law requires officers to refer victims to victim advocates, distribute information about services available, and help victims and any children present obtain medical care. It also establishes a council charged with the creation of a model policy for police responding to sexual assault. Every law enforcement agency in the state will have to meet or exceed the model policy by September 2025.

  The driving force behind the bill was Nicole Chase, a former restaurant worker who was arrested by police in 2017 after she reported that her boss sexually assaulted her. Ms. Chase sued the city of Canton, CT, and others. In March 2021, when the case reached the Second Circuit, NWLC, along with our law firm partner Linklaters LLP and 30 other organizations, submitted an amicus brief highlighting the ways gender bias by law enforcement, including reliance on harmful sex-based stereotypes, not only leads to failures in sexual assault investigations but also compounds the trauma of sexual assault for survivors. On October 4, 2021, the Second Circuit dismissed the defendants' appeal, allowing Ms. Chase's remaining claims to move forward at the trial level, and for her to eventually settle the case.

- ***Consumer Financial Protection Bureau v. Community Financial Services Association of America* (SCOTUS)** - Safeguarding the administrative state

  On May 16, the Supreme Court upheld the constitutionality of the CFPB's funding structure.

  In May 2023, NWLC—along with Lawyers' Committee for Civil Rights Under Law and fourteen other organizations committed to ending discrimination against people of color, including those with low incomes—filed an amicus brief with the Supreme Court in this matter. Our brief urged the Supreme Court to reverse the Circuit Court's decision that the CFPB's structure violated the Appropriations Clause of the U.S. Constitution. We also explained why the CFPB's constitutionality matters: because the agency is integral to the federal government's efforts to stop predatory and discriminatory lending practices. The CFPB was created in the wake of the subprime mortgage foreclosure crisis to make sure that such a crisis would not happen again. The agency is critical to counteracting the long history of state-sanctioned financial discrimination in the United States. Financial discrimination, while now illegal, remains all too pervasive today. Our brief therefore urged the Court to uphold the CFPB's constitutionality, preserving its ability to protect consumers from racial discrimination and deceptive lending practices.

- ***Doe v. Horne* (9th Cir.)** - Challenging Arizona's anti-trans sports ban

  On September 9, the Ninth Circuit issued a decision upholding a preliminary injunction blocking Arizona's anti-trans sports ban, meaning that the girls who filed this case will be able to continue playing school sports alongside their peers while the district court proceedings continues.

  In October 2023, NWLC, our law firm partner, Hogan Lovells US LLP, and 33 organizations committed to gender justice filed an amicus brief that explained to the court that trans-inclusive school policies, including for school sports, make schools safer and more equitable for trans girls, cisgender girls, and all students.

- ***K.C. v. Individual Members of the Medical Licensing Board of Indiana* (7th Cir.)** - Protecting minors' access to gender-affirming health care

  On November 13, a panel of the U.S. Court of Appeals for the Seventh Circuit issued an order vacating, reversing, and remanding the district court's decision in *K.C. v. Individual Members of the Medical Licensing Board of Indiana*, a challenge to Indiana's ban on gender-affirming health care for minors. The Court determined that the law did not discriminate based on sex because it barred care for boys and girls, and it held that the ban was likely to survive the Equal Protection challenge, applying rational basis review only. The

Court also rejected plaintiffs' Due Process and Free Speech claims. As a result, the appellate court lifted the preliminary injunction in the case, permitting Indiana's ban on gender-affirming care for minors to go into effect.

On September 27, 2023, the NWLC joined an amicus brief before the Seventh Circuit in this matter, alongside GLBTQ Legal Advocates & Defenders (GLAD) and five additional organizations and law firm counsel Jenner & Block, supporting transgender young people, and their parents and doctors. We urged the appeals court to uphold the district court's preliminary injunction, which since June 2023 had blocked Indiana's ban on gender-affirming care because it unlawfully discriminated based on sex by singling out transgender youth.

- ***Kadel v. Folwell* (4th Cir.)** - Ensuring access to gender-affirming care

  On April 29, an *en banc* panel of the Fourth Circuit Court of Appeals issued a decision in *Kadel v. Folwell*, a challenge to North Carolina's State Health Plan for Teachers and State Employees' exclusion of coverage for gender-affirming care, which had been consolidated on this appeal with a challenge to a similar coverage exclusion in West Virginia's Medicaid program. The Court affirmed that state healthcare plans that cover medically necessary treatments for certain diagnoses but bar coverage of those same medically necessary treatments for a diagnosis unique to transgender patients violate the Equal Protection Clause of the Fourteenth Amendment by discriminating based on gender identity and sex.

  NWLC joined an amicus brief in support of transgender patients back in October 2020, when North Carolina argued before the Fourth Circuit that it was immune to the plaintiffs' Section 1557 claim. Our amicus brief highlighted the many ways that states engage in discriminatory practices that violate Section 1557 and emphasized the vital role that private lawsuits and related monetary damages play in remedying the harms of discrimination and vindicating civil rights.

- ***LaRose v. King County, Washington, and Public Defender Association* (Wash. Ct. of Apps., Div. II)** - Standing up against sexual harassment and violence in the workplace

  On May 14, the Court of Appeals, Div. II of Washington issued an unpublished decision reversing the trial court's decision that found Sheila LaRose, a public defender, experienced a hostile work environment when she was sexually harassed and physically stalked by a client during and after her legal representation.

  While we are disappointed by this outcome, NWLC is grateful for the courage of Ms. LaRose and honored to have submitted an amicus brief in support of her efforts to uphold the trial court's decision. We also want to thank our pro bono partners at Outten & Golden LLP for its hard work on our brief as well as our co-lead, the Washington Employment Lawyers Association, and the 38 additional advocacy organizations that joined us.

- ***Muldrow v. City of St. Louis* (SCOTUS)** - Upholding Title VII's protections

  On April 17, the U.S. Supreme Court ruled that, to be entitled to relief, Title VII does not require an employee to show that they were "seriously" or "significantly" harmed, simply that they were discriminated against regarding the terms, conditions, or privileges of employment based on a protected characteristic. This is a great decision for workers. It recognizes that discrimination takes many forms, and that disadvantaging workers because of their race, sex, or other protected characteristic violates Title VII's broad prohibition on discrimination, regardless of whether that degradation affects the worker's take-home pay.

  In September 2023, NWLC, together with the National Employment Lawyers Association and NAACP Legal Defense and Educational Fund, submitted an amicus brief urging the Court to reject attempts to weaken Title VII and underscoring the need to protect workers like Ms. Muldrow—Black, Latinx, Asian American, and Indigenous people; women; LGBTQ+ people; and people with disabilities—who continue to experience discrimination in the workplace, including through forced transfers.

- ***Mundell v. Acadia Hospital Corp.* (1st Cir.)** - Broadening the interpretation of state equal pay laws

  In February 2024, the First Circuit ruled that Maine's Equal Pay Law must be interpreted broadly to protect workers, and employees need only prove they were paid less than other comparable employees of a different gender for comparable work—not that their employer intended to treat them differently. 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; Dr. Mundell and other female psychologists earned $50 an hour for their work, while their male colleagues earned $90 or more an hour. On appeal, the question was whether an employee who sues under the Maine Equal Pay Law must prove that her employer *intended* to discriminate against her, or whether the fact that she did the same work for half the pay as her male colleague was enough to prove that her employer violated the law.

  In September 2022, NWLC co-led an amicus brief in this case, alongside the ACLU and the ACLU of Maine. We urged 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.

- ***People v. Weinstein* (N.Y. Ct. App.)** - Defending conviction of Harvey Weinstein

  On April 25, the New York Court of Appeals disappointingly reversed and ordered a new trial in the conviction of Harvey Weinstein in the case of *People v. Weinstein*. In this appeal, Weinstein asked the Court of Appeals to reverse one of his criminal convictions, arguing that the prosecution should not have been allowed to introduce the testimony of several other women, in addition to those he was charged with assaulting, who said that Weinstein also had assaulted them. This is known as "prior bad act" or "similar crimes" evidence. Its admissibility is limited to circumstances where it is used to prove intent or other specific issues, not to prove that the defendant has a criminal "propensity." The trial court—correctly, we argued—ruled that this kind of limited use was permissible here. The appeals court granted Weinstein's request for a reversal, however, holding that the trial court "erroneously admitted testimony of uncharged, alleged prior sexual acts against persons other than the complainants of the underlying crimes because that testimony served no material non-propensity purpose."

  In October 2023, NWLC and eighteen other organizations joined an amicus brief led by Sanctuary for Families and Women's Equal Justice in the New York Court of Appeals. Our brief explained that evidence that a defendant has assaulted other people can be particularly important in sexual assault cases because it can help the jury understand the defendant's intent and the complainant's non-consent. Sexual assault cases often involve the complainant's word against the defendant's. And juries may have misconceptions about how a survivor should act that could cause them to disbelieve complainants who, for example, continue to have a relationship with their abuser due to unequal power dynamics, or who froze during an assault instead of fighting back. Evidence that the defendant has assaulted other people can help a jury to understand their methods of victim selection, perpetration, and concealment—and to be appropriately skeptical of their claim that the survivor consented.

  On May 20, 2024, NWLC joined a Memo of Support submitted to the New York State legislature, urging for passage of a bill that would permit evidence of an attacker's pattern of sexual assault to be introduced in a sexual assault trial. The bill reflects many of the facts explained in our brief, including the heightened obstacles that survivors of sexual assault face and the relevance of an assailant's pattern of behavior.

* * *

NWLC has two subteams of dedicated litigators—one for Reproductive Rights and Health and one for Education and Workplace Justice. The dedicated litigators for Reproductive Rights and Health are Michelle Banker, Senior Director of Litigation; K. M. Bell, Senior Litigation Counsel; Alison Tanner, Senior Litigation Counsel; Kenna Titus, Litigation Fellow; and Emily Gabos, Women's Law and Public Policy Fellow. The dedicated litigators on the Education and Workplace Justice team are Liz Theran, Senior Director of Litigation, and Rachel Smith, Senior Litigation Counsel. The intense work involved in NWLC's cases and amicus briefs is further supported by NWLC attorneys who manage the Legal Network for Gender Equity and the Abortion Access Legal Defense Fund as well as attorneys on each program team, many of whom work on and sometimes lead these cases alongside their important policy work. And our colleagues throughout the Law Center provide invaluable contributions to our litigation practice: the Development team helps secure pro bono law firm co-counsel; the Finance team helps our litigators track their time and supports our filing crucial attorneys'-fees petitions; the Research team provides data to support our amicus and litigation efforts; and the Campaigns and Communications team amplifies NWLC's litigation work to change the public narrative and our culture.