

No. 18-1206

In the
United States Court of Appeals for the Fourth Circuit

EVANGELINE J. PARKER,

Plaintiff-Appellant,

v.

REEMA CONSULTING SERVICES, INC.,

Defendant-Appellee.

On appeal from the United States District Court for the District of Maryland,
Case No. 8:17-cv-01648-RWT

***AMICI CURIAE BRIEF OF THE NATIONAL WOMEN'S LAW CENTER,
ET AL., IN SUPPORT OF PLAINTIFF-APPELLANT AND IN FAVOR OF
REVERSAL***

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Dated: May 30, 2018

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INTEREST OF *AMICI CURIAE*¹

The National Women’s Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women’s legal rights and the rights of all people to be free from sex discrimination. Since 1972, NWLC has worked to secure equal opportunity in the workplace and has advocated to ensure that anti-discrimination laws are interpreted correctly to vindicate important protections against discrimination and retaliation in the workplace and in other contexts. NWLC has participated as counsel or amicus curiae in a range of cases before the Supreme Court and the federal courts of appeals to secure the equal treatment of women under the law, including numerous cases addressing the scope of Title VII’s protection. The Center has long sought to ensure that rights and opportunities are not restricted on the basis of gender stereotypes and that all individuals enjoy protections against sex discrimination as promised by federal law.

The Appendix to this brief lists additional *Amici*.

¹ *Amici* submit this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2), in conjunction with their motion for leave to file. *Amici* sought permission to file from the parties; Appellant consented to the filing of the brief but Appellee declined to consent. *Amici* further state, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), that no counsel for a party authored this brief in whole or in part, and no person other than the *amici curiae* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Evangeline Parker was rising through the ranks at Appellee Reema Consulting Services, Inc. (“RCSI”) when she was subjected to a false and degrading rumor—started by a male colleague jealous of her success—that she was promoted only because she engaged in sexual activity with a male manager. The rumor quickly spread and permeated the workplace, resulting in harassment and discrimination against Ms. Parker by RCSI’s highest ranking on-site manager and others. When Ms. Parker tried to stop the rumor from spreading and formally complained about sexual harassment, RCSI management retaliated against her, culminating in her termination.

The district court’s dismissal of Ms. Parker’s claims should be reversed, as it rests on multiple errors of law under Title VII and is based on misconceptions of the nature of the sex-based rumors at issue and the harm they caused.² Numerous courts have correctly held that rumors that a woman was promoted “by sleeping her way to the top” are based on harmful gender stereotypes and may contribute to a hostile work environment that is severe or pervasive. Compelling and reliable social science also corroborates Ms. Parker’s claim, demonstrating that women

² Title VII does not distinguish between biological sex and gender, and many cases cited herein use the terms sex and gender interchangeably. *Amici* do the same for the purpose of this brief.

frequently face sexual harassment in the workplace; women report experiencing sexual harassment at rates higher than men; workplace rumors about sexual conduct are particularly harmful to women; and employers frequently recast harassment based on sex as a so-called “personality clash.”

The district court also erroneously concluded—applying the wrong legal standard—that Ms. Parker failed to state a Title VII retaliation claim. A plaintiff can reasonably believe she is engaging in protected activity even if her claim of discrimination is ultimately deemed non-actionable. The district court likewise erred in dismissing Ms. Parker’s discriminatory termination claim, incorrectly concluding that Ms. Parker failed to exhaust her administrative remedies.

In sum, the district court took an erroneous view of Title VII in multiple respects, and the dismissal of Ms. Parker’s claims should be reversed.

ARGUMENT

I. Workplace Rumors That A Woman Obtained A Position Or Promotion Based On Sexual Activity, As Opposed To Merit, Are Based On Sex And May Form The Basis For A Title VII Hostile Work Environment Claim.

A. Flawed Assumptions About Sex-Based Workplace Rumors Underpin The District Court’s Ruling.

The district court held that a workplace rumor that Ms. Parker was promoted based on sexual activity rather than merit could not form the basis of a Title VII hostile work environment claim because such rumors are not based on sex. The court stated that the “establishment and circulation of this rumor is not based upon

her gender, but rather based upon her alleged conduct, which was defamed by, you know, statements of this nature.” J.A. 149 (Dec. 7, 2017 Hearing Transcript (“Tr.”) 34:10–13).³ In other words, the court drew a distinction between rumors based on “alleged conduct” and rumors based on gender, construing a rumor that a woman “slept her way to the top” to implicate only conduct, not sex or gender. This is a false distinction. As explained herein, the conduct alleged by the rumor—that Ms. Parker “slept her way to the top”—stems from and perpetuates negative stereotypes of women in the workplace. Such “alleged conduct” cannot be separated from gender—particularly, as here, at the pleadings stage.

The district court also concluded that such rumors are non-actionable because similar rumors could be mounted against people of different genders and sexual orientations. *See* J.A. 130, 149 (Tr. 14:4–7, 33:19–22). According to the district court, “this same type of a rumor could be made in a variety of other context[s] involving people of the same gender or different genders alleged to have had some kind of sexual activity leading to a promotion.” J.A. 149 (Tr. 33:19–22). This, too, is flawed reasoning under Title VII, which is not limited to discrimination or harassment perpetrated by men against women, but rather reaches harassment and discrimination on the basis of sex, regardless of the gender

³ The district court did not issue a written opinion and instead referred to the hearing transcript as the basis for its order granting the motion to dismiss. J.A. 90.

of the perpetrator or the gender of the person targeted. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78–80 (1998) (explaining that Title VII “protects men as well as women” and holding that same-sex harassment can constitute harassment “because of sex” in violation of Title VII).

B. Title VII Prohibits Sex-Based Harassment, Including Comments Based On Sex Stereotyping.

“Because the workplace environment is one of the ‘terms, conditions, or privileges of employment,’ Title VII creates a cause of action for employees forced to work in a hostile workplace.” *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 331 (4th Cir. 2011) (quoting *Meritor Savs. Bank v. Vinson*, 477 U.S. 57, 64–67 (1986)) (internal citations omitted). “In order to make out a hostile work environment claim based on sex, ‘a plaintiff must [plead] that the offending conduct’ was *inter alia* “because of her sex.”” *Id.* (citations omitted). Under *Oncale*, “harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex.” 523 U.S. at 80. Rather, a plaintiff is subject to unlawful harassment where such harassment involves “such sex-specific and derogatory terms . . . as to make it clear that the harasser is motivated by general hostility to the presence of [the plaintiff’s sex] in the workplace.” *Id.*

Hostile work environment claims may arise from comments implicating gender-based stereotyping. In *Price Waterhouse v. Hopkins*, the Supreme Court recognized Title VII claims based on sex stereotyping in a case where the plaintiff

was denied a promotion because she was perceived as insufficiently feminine in her appearance and behavior. 490 U.S. 228, 250-58 (1989). As the Court explained, “we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for [i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.” *Id.* at 251 (citation and quotation marks omitted). As the logic of *Price Waterhouse* makes clear, harassing conduct based on or motivated by gender stereotypes may constitute a hostile work environment based on sex. *See Churchill v. Prince George’s Cty. Pub. Sch.*, 2017 WL 5970718, at *5 (D. Md. Dec. 1, 2017) (citing *Price Waterhouse*, 490 U.S. at 251-55). “This is true of stereotypes about both how the sexes are and how they should be.” *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 119 (2d Cir. 2018) (en banc) (citing *Price Waterhouse*, 490 U.S. at 250).

C. Rumors That A Female Employee Used Sex To Advance In The Workplace Reflect And Perpetuate Gender Stereotypes.

Rumors (as in this case) that a woman has advanced in the workplace by sleeping with a superior, as opposed to on the basis of merit, are based on and reinforce sex stereotyping. *See Spain v. Gallegos*, 26 F.3d 439, 448 (3d Cir. 1994) (“[T]he crux of the rumors and their impact upon Spain is that Spain, a female, subordinate employee, had a sexual relationship with her male superior.

Unfortunately, traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior stubbornly persist in our society”); *Brown-Baumbach v. B&B Auto., Inc.*, 437 F. App’x 129, 132-33 (3d Cir. 2011) (reversing summary judgment where a female employee was, *inter alia*, subjected to office-wide rumors that she and a co-worker were sleeping together which “could be considered as contributing to the hostile work environment” and referencing, though not applying, “the stereotype of a woman using her sexuality to gain favor with a supervisor”); *see also Bystry v. Verizon Servs. Corp.*, 2005 WL 8147293, at *8 n.25 (D. Md. Mar. 31, 2005) (comment that the plaintiff “was ‘sleeping her way to the top’ does reflect antiquated gender stereotypes”)⁴; Joan E. Van Tol, *Eros Gone Awry: Liability Under Title VII for Workplace Sexual Favoritism*, 13 *Indus. Rel. L.J.* 153, 182 (1991) (describing “the insidious stereotypical notion that women can ‘sleep their way to the top’”).

The “sleeping her way to the top” stereotype is one manifestation of workplace discrimination that women may encounter, as, in some cases, “even when a woman fits her employer’s notion of ‘feminine,’ she is not respected

⁴ *Bystry* involved a claim for discriminatory termination, not a hostile work environment, and the claim was dismissed at summary judgment. Notably, the district court stated that if the “sleeping her way to the top” statements “were made by a decision maker at Verizon, *Bystry* would have a more persuasive argument that Verizon’s decision was based on impermissible gender stereotypes.” *Bystry*, 2005 WL 8147293, at *8 n.25.

because she is merely seen as a seductress, pet, or mother.” Anna M.

Archer, *From Legally Blonde to Miss Congeniality: The Femininity Conundrum*,

13 *Cardozo J.L. & Gender* 1, 10 (2006). The stereotype reflects and perpetuates a notion that women are otherwise unfit or unable to achieve in the workplace based on merit, and that any success must therefore stem from their sexuality and personal relationships.

The stereotype of a woman “sleeping her way to the top” is particularly harmful in light of the societal double-standard which praises men and punishes women for sexual experience. *See, e.g., Bogoly v. Easton Pub’g. Co.*, 2001 WL 34368920, at *3 (E.D. Pa. Nov. 1, 2001) (“[I]n our society, conversations between men about sexual behavior might lead to conclusions about a man’s ‘prowess’—a positive inference—while similar conversations with a female employee about her sexual behavior might engender notions of her promiscuity—a negative inference.”). Indeed, as detailed in this brief, this double standard is well-documented; peer-reviewed empirical social science studies show that with respect to statements concerning sexual activity, there is “clear agreement” that the “sexual double standard exists.” Terri D. Conley et al., *Backlash From the Bedroom: Stigma Mediates Gender Differences in Acceptance of Casual Sex Offers*, 37 *Psychol. of Women Q.* 392, 394 (2012) (“Conley 2012”). For example, women who participate in casual sexual activity are perceived more negatively than men

for engaging in the same activity, including being viewed as “less intelligent” and “less competent” than “men who accepted the same offer” for casual sex. *Id.* at 403.

The Third Circuit’s ruling in *Spain* correctly connects the gender stereotyping that animates such rumors to the resulting hostile work environment. In *Spain*, rumors that a female employee had a sexual relationship with her male superior were connected to “traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior.” 26 F.3d at 448. The Third Circuit, reversing the district court’s grant of summary judgment, concluded that a reasonable jury could find for Spain on her Title VII claim as a result of the rumor and the rumor’s devastating impact on her reputation and personal relationships in her workplace: “[b]ecause we are cognizant that these stereotypes may cause superiors and co-workers to treat women in the workplace differently from men, we find that a reasonable jury could conclude that Spain suffered the effects she alleges because she was a woman.” *Id.*

Other courts have likewise recognized that where—as here—a female employee is rumored to have used sex to gain influence in the workplace, such rumors are based on her sex for the purpose of Title VII. *See Jew v. University of Iowa*, 749 F. Supp. 946, 958 (S.D. Iowa 1990); *Gillen v. Borough of Manhattan Cmty. Coll.*, 1999 WL 221105, at *4 (S.D.N.Y. Apr. 14, 1999); *Allen v. TV One*,

LLC, 2016 WL 337533, at *8 (D. Md. Jan. 28, 2016); *see also McDonnell v. Cisneros*, 84 F.3d 256, 259-60 (7th Cir. 1996) (stating, in dicta, “[u]nfounded accusations that a woman worker is a ‘whore,’ a siren, carrying on with her coworkers, a Circe, ‘sleeping her way to the top,’” constitute a form of sexual harassment because they “are accusations based on the fact that she is a woman”).⁵

In *Jew*, the district court emphasized that the rumors “accused [the plaintiff, a female professor] of physically using her sex as a tool for gaining favor, influence and power with the Head of the Department, a man, and suggested that her professional accomplishments rested on sexual achievements rather than achievements of merit.” 749 F. Supp. at 958. The court explained, after a bench trial, that the plaintiff’s gender was thus the “but for” cause of the rumor: “[w]ere Dr. Jew not a woman, it would not likely have been rumored that Dr. Jew gained

⁵ In *McDonnell*, the allegations stemmed from a workplace investigation of a rumor that the female plaintiff provided sexual favors in exchange for rapid promotions from the male plaintiff, her workplace superior. 84 F.3d at 257-58. Unlike here, the alleged hostile work environment arose solely from the manner in which the truth of the rumor was investigated. *Id.* at 258–59. The Seventh Circuit concluded “that a claim of sexual harassment might arise from verbal harassment of a pair of male and female employees falsely accused of sexual hanky-panky,” rejecting the argument that these kinds of rumors could not be based on sex. *Id.* at 260. However, the court concluded that the facts at issue, a claim based on allegations that an *investigation* of sexual harassment had “exceed[ed] the proper limits,” did not state an actionable claim for sexual harassment, in part because the court did not want to disincentivize employer investigations of sexual harassment. *Id.* at 260–61.

favor with the Department Head by a sexual relationship with him.” *Id.* In *Gillen*, the district court ruled similarly against a motion to dismiss, stating that “the rumor of favoritism by her male superior, in conjunction with more explicit rumors of a sexual liaison and resulting favors, can be seen as inferentially dependent on Plaintiff’s sex.” 1999 WL 221105, at *4; *see also Allen*, 2016 WL 337533, at *8 (denying motion to dismiss in a case where, *inter alia*, the plaintiff was subject to false rumors that she was hired because she was sexually involved with the CEO, who was her boss’s son: “but for her status as a woman in the workplace, Plaintiff would not have been subjected to alleged harassment by her supervisors”).⁶

The court in *Jew* correctly rejected the argument that a “sleeping her way to the top” rumor was not based on sex because it included the male department head. As the court explained, a gender power dynamic was inherent in the rumor, which

⁶ While some cases have incorrectly held that rumors that a female employee “slept her way to the top” are not “based on sex” under Title VII because the rumors involve both women and men, these cases were incorrectly decided based on flawed logic and are not binding on this Court. *See, e.g., Duncan v. Manager, Dep’t of Safety, City & Cty. Of Denver*, 397 F.3d 1300, 1312 (10th Cir. 2005); *Rose-Stanley v. Virginia*, 2015 WL 6756910 at *6 n.4 (W.D. Va., Nov. 5, 2015); *Lewis v. Bay Indus., Inc.*, 51 F. Supp. 3d 846, 854-56 (E.D. Wis. 2014). As the Seventh Circuit correctly explained in rejecting such flawed logic, it would be “exceedingly perverse” if harassing both men and women would “buy. . . immunity from Title VII liability.” *McDonnell*, 84 F.3d at 260. For further analysis on what is sometimes referred to as the “equal opportunity harasser” rationale see Wendy N. Hess, *Workplace Rumors About Women’s Sexual Promiscuity As Gender-Based Insults Under Title VII*, 31 ABA J. Lab. & Emp. L. 447, 461–64 (2016).

was directed at Dr. Jew: “Unlike the import of the rumors with respect to Dr. Jew, however, there was no suggestion that [the male Department Head] Dr. Williams was *using* a sexual relationship to gain favor, influence and power with an administrative superior.” *Jew*, 749 F. Supp. at 958; *see also Ocheltree v. Scollon Prods.*, 335 F.3d 325, 332 (4th Cir. 2003) (explaining that even though some men as well as the female plaintiff were subject to and offended by sexually explicit workplace conduct, a jury could find that the conduct was based on sex because it was “particularly offensive to women” and was “intended to provoke [the plaintiff’s] reaction as a woman”); *Brown-Baumbach*, 437 F. App’x at 133 (pointing to “traditional negative stereotypes” described in *Spain* to reject the district court’s reasoning that rumors about a female plaintiff sleeping with a male co-worker were equally offensive to both the plaintiff and the male co-worker).

Likewise, the rumors at issue here, even though they incidentally involved a male supervisor, were directed at and had the effect of demeaning Ms. Parker based on her sex. Only she, the woman, was implied to have used a sexual liaison for professional gain, and only she, the woman, suffered a hostile work environment resulting from the rumors, a discriminatory and retaliatory termination and the resulting economic harm. Accordingly, the Court should reject the notion that rumors about “sleeping her way to the top” are not based on a female employee’s sex.

D. Reliable Social Science Studies Reinforce Ms. Parker’s Sex-Based Discrimination Claim.

Peer-reviewed empirical social science demonstrates that—consistent with Ms. Parker’s pleadings in this case—false rumors about a female employee advancing through sexual activity, not merit, constitute gender-based harassment. The studies also show that this type of harassment results in measurable psychological harm to women. Janet K. Swim et al., *Everyday Sexism: Evidence for Its Incidence, Nature, and Psychological Impact From Three Daily Diary Studies*, 57 J. Soc. Issues 31, 50 (2001) (“Swim 2001”) (finding a statistically significant link between encounters with sexism and diminished psychological well-being, including more anger and depression and lower self-esteem).

1. Female Subjects Of Workplace Sexual Rumors Are Perceived More Negatively Than Men Participating In The Same Alleged Activity.

Rumors that a woman “slept her way to the top” are harmful on the basis of sex because they cause the woman to be perceived more negatively in terms of competence than the male supervisor with whom she was allegedly involved. Peer-reviewed empirical social science studies show that women are perceived more negatively—including being seen as less competent and intelligent—than men for engaging in the same sexual activity. Conley 2012 at 403–04. Moreover, “research has consistently shown that women are judged more harshly than men for engaging in” extramarital affairs and similar sexual behaviors. *Id.* at 394. Such

rumors, in other words, stem from and lead to diminished perceptions of women in the workplace. The rumor at issue here accused Ms. Parker of engaging in sex with a married higher-ranking manager to obtain her position, J.A. 8–9 (Compl. ¶¶ 12, 16), and accordingly led to a more negative view of Ms. Parker in multiple ways. That these types of rumors are often started in response to a woman’s success in the workplace reflects the ways in which women can “be penalized for merely exhibiting competence and success in male gender-typed positions.” Madeline E. Heilman, *Gender stereotypes and workplace bias*, 32 Res. In Organizational Behav. 113, 126 (2012) (summarizing social science studies).

The competence-sex nexus that has been recognized by social science literature is reflected by the allegations in this case: Ms. Parker became the subject of “sleeping her way to the top rumors” circulated by several male employees after she became one of a “few female employees who had reached the managerial level in several years.” J.A. 8 (Compl. ¶¶ 11–12). The motive Ms. Parker identifies—her male co-worker’s jealousy of her promotion—is consistent with the empirical social science literature, which finds that women are often not viewed as “legitimate careerists” when they violate the expectation that “men (not women) occupy powerful roles,” such that their “authority” in the workplace is not welcomed. Laurie A. Ruderman & Stephen E. Kilianski, *Implicit and Explicit Attitudes Toward Female Authority*, 26 Personality & Soc. Psychol. Bull. 1315,

1326 (2000); *see* J.A. 9–10 (Compl. ¶¶ 13, 25). In short, the relevant social science literature underscores that rumors like those at issue here cause gender-based harm because they stem from sex-stereotyping.

2. Women Are More Frequent Targets Of Sexual Harassment Than Men, And Are Disadvantaged In The Workplace As A Result.

Empirical social science studies estimate that at least one out of four women report having experienced sexual harassment in the workplace, with rates rising as high as 85% of female employees. EEOC, *Report of the Co-Chairs of the EEOC, Select Task Force on the Study of Harassment in the Workplace* (June 2016) at 8–10 (“EEOC Report”) (summarizing social science studies and testimony to the EEOC task force).⁷ These peer-reviewed social science studies confirm the unsurprising premise that women in the workplace report being sexually harassed at a rate four times higher than males, a figure that has not decreased over time. *E.g.* Meredith A. Newman et al., *Sexual Harassment in the Federal Workplace*, 63 *Pub. Admin. Rev.* 472, 473 (2003) (“Newman 2003”) (explaining that 25 percent

⁷ The “one in four” figure is from surveys using a “randomly representative sample” also called a “probability sample,” and “was remarkably consistent across” those surveys. *Id.* at 8. This type of probability sampling “maximizes” the “representativeness of the survey results” and offers “important advantages over other types of sampling.” Federal Judicial Center, *Reference Manual on Scientific Evidence* 380 (3d ed. 2011).

of female and 6 percent of males employees in a random national sample of federal employees reported being the victim of sexual harassment).

In addition, most female employees who suffer harassment do not file a formal complaint. EEOC Report, at 16 (“[A]nywhere from 87% to 94% of individuals did *not* file a formal complaint.”) Indeed, social science evidence shows that women often choose not to report sexual harassment and instead attempt to cope by avoiding or appeasing the harasser or by pretending that the harassment is not happening. Louise F. Fitzgerald et al., *Why Didn't She Just Report Him? The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, 51 J. Soc. Issues. 117, 119–21 (1995). The “most common reason” a women might choose not to report sexual harassment is “fear—fear of retaliation, of not being believed, of hurting one’s career, or of being shamed and humiliated.” *Id.* at 122 (collecting studies). In this case, that fear was all too real: Ms. Parker reported and addressed the sexual harassment directed at her and faced severe and quick retaliation for doing so.

Peer-reviewed empirical social science also shows that sexual harassment results in significant psychological harm and negatively impacts harassment victims’ work. Experiencing sexual harassment, “even at relatively low frequencies, exerts a significant negative impact on women’s psychological well-being and, particularly, job attitudes and work behaviors.” Kimberly T. Schneider

et al., *Job-Related and Psychological Effects of Sexual Harassment in the Workplace: Empirical Evidence From Two Organizations*, 82 J. Applied Psychol. 401, 412 (1997). This psychological harm caused by sexual harassment underscores the hostility of the work environment Ms. Parker faced as a result of the rumor and the actions of her co-workers and supervisors in response to the rumor. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993) (psychological harm is relevant to a determination of whether a hostile work environment exists).

While individuals of all genders can be victims of sexual harassment, peer-reviewed social science shows that women experience harassment more frequently and suffer more psychological harm than men as a result. *E.g.* Swim 2001 at 50; Newman 2003 at 478–79. This differential treatment on the basis of sex, coupled with Ms. Parker’s specific allegations as to the ways in which the rumor specifically attacked and undermined her well-earned promotions and poisoned her work environment, highlights the district court’s error in dismissing her claim.

3. Recasting Sex-Based Rumors As So-Called “Personality Conflicts” Serves To Perpetuate Workplace Discrimination.

Both the district court and Appellee RCSI failed to identify the rumors at issue as sex-based discrimination and instead recast such discrimination and harm as mere “conduct” or “personality conflict.” The district court stated that the rumor in this case was “based upon her alleged conduct,” not gender. J.A. 149 (Tr. 33:9–13). Appellee’s agents “blamed Ms. Parker for disruption to the workplace,”

stating that she should have been fired for “‘huffing and puffing about this BS rumor,’” and encouraged her and those perpetrating the harassment against her “to apologize to one another and instructed them to put the prior incidents behind them and move on.” J.A. 11 (Compl. ¶¶ 27–29).

Peer-reviewed empirical social science studies show that the district court’s and RCSI’s reactions, though flawed, are quite common. Employers frequently attempt to transform harmful sex-based rumors against women into non-actionable personality conflicts, and in doing so undermine efforts to achieve greater workplace equality. For example, one study demonstrates that employment discrimination complaint handlers tended to “recast discrimination complaints as poor management problems, personality clashes, or both.” Lauren B. Edelman et al., *Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace*, 27 *Law & Soc’y Rev.* 497, 515–19 (1993) (“Edelman 1993”). Another empirical study about sexual harassment finds managers and supervisors frequently react to sexual harassment claims by portraying “such conduct as a personality conflict or a management problem rather than a systematic problem facing women in the workplace.” Anna-Maria Marshall, *Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment*, 28 *Law & Soc. Inquiry* 659, 676-77, 685 (2003). But “[w]hat may at first glance look like ‘personality clash’ idiosyncratic to the particular employee may, in fact, be something very different

and far more menacing.” Mark S. Brodin, *The Demise of Circumstantial Proof in Employment Discrimination Litigation: St. Mary's Honor Center v. Hicks, Pretext, and the “Personality” Excuse*, 18 Berkeley J. Emp. & Lab. L. 183, 217–19 (1997) (“The ‘personality’ defense also ignores the distinct possibility, documented in the social science literature, that the minority or female employee has been negatively affected by the constant indignities of a discriminatory workplace”).

As other courts have recognized, and as is the case here, “interpersonal issues” may “simply reflect discrimination by another name.” *Tuli v. Brigham & Women's Hosp., Inc.*, 566 F. Supp. 2d 32, 36 & n.2 (D. Mass. 2008) (citing Edelman 1993 and *Price Waterhouse*, 490 U.S. at 235–36).

E. Rumors Of A Woman “Sleeping Her Way To The Top” Can Create A Hostile Work Environment That Is Sufficiently Severe Or Pervasive To Violate Title VII.

A hostile work environment exists “[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Harris*, 510 U.S. at 21 (internal citation and quotation marks omitted). Courts “determine whether an environment is sufficiently hostile or abusive by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes

with an employee's work performance.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 787–88 (1998) (internal citations and quotation marks omitted).

The district court determined that Ms. Parker had failed to allege severe or pervasive harassment because the rumors, in the district court's view, amounted to “a few slights.” J.A. 150 (Tr. 34:18).⁸ The district court's characterization fails to account for the nature, severity, and pervasiveness of the harm from “sleeping her way to the top” rumors and ignores the other allegations of harassment in the Complaint resulting from the rumors. As Judge Posner explained in *McDonnell*, “[u]nfounded accusations that a woman worker is a ‘whore,’ a siren, carrying on with her coworkers, a Circe, ‘sleeping her way to the top,’ and so forth are capable of making the workplace unbearable for the woman verbally so harassed.” 84 F.3d at 259.⁹

⁸ Although the district court suggested that the rumor had to be “severe and per[va]sive,” J.A. 150 (Tr. 34:18–20), the correct standard is disjunctive—“severe or pervasive”—and the plaintiff need only show one or the other. *Harris*, 510 U.S. at 21.

⁹ Because the Seventh Circuit concluded that a hostile work environment claim had not been stated on the facts alleged, it did not consider whether the allegations were severe or pervasive. The district court in *McDonnell*, in determining that the rumors were not severe or pervasive, highlighted the investigators' public announcement that the allegations were false, and, in contrast to Ms. Parker's well-pleaded complaint, noted plaintiffs' failure to show a diminished ability to work because of the rumors. *McDonnell v. Cisneros*, 1995 WL 110131, at *8 (N.D. Ill. Mar. 16, 1995), *aff'd in part*, 84 F.3d 256 (7th Cir. 1996).

Courts have concluded that harassment was severe or pervasive where—as here—rumors interfered with a female employee’s reputation and ability to do her job or advance in the workplace. *See Jew*, 749 F. Supp. at 958; *Spain*, 26 F.3d at 450; *Howley v. Town of Stratford*, 217 F.3d 141, 154–55 (2d Cir. 2000). In *Jew*, the district court based its conclusion that the harassment was severe and pervasive on the “damage to Dr. Jew’s reputation resulting from the sexual harassment [which] had a concrete impact in her workplace” and the connection of the “hostility of the workplace” with “Dr. Jew’s promotional consideration.” 749 F. Supp. at 958–59; *see also Spain*, 26 F.3d at 449–50 (finding harassment severe or pervasive when, as a result of the rumors “the alleged workplace hostility manifested itself both in the immediate interaction between Spain and her colleagues and in connection with her consideration for a promotion in 1990.”). Similarly, in *Howley*, where a rumor was spread that the female plaintiff, a firefighter, “gained her office of lieutenant only by performing fellatio,” the Second Circuit reversed the grant of summary judgment for the defendant, holding that the harassment could reasonably be viewed as “intolerably alter[ing]” the plaintiff’s work environment and could be viewed as “humiliating.” 217 F.3d at 154. The Second Circuit also explained that the rumor impacted the plaintiff’s

ability to perform her job, noting that “the fomenting of gender-based skepticism as to the competence of a commanding officer may easily have the effect, among others, of diminishing the respect accorded the officer by subordinates.” *Id.*

Similarly, in this case, Ms. Parker has pleaded facts to show that the rumor caused gender-based hostility, which diminished the respect she received from her subordinates and supervisors, and led the highest ranking on-site manager to explicitly end her opportunities for advancement.¹⁰

In addition to characterizing the rumors as “a few slights,” the district court suggested that Ms. Parker did not meet the criteria for a hostile work environment because the “temporal element here is very short in terms of how long this rumor was in circulation.” J.A. 150 (Tr. 34:16–17). However, the temporal element was short only because Ms. Parker was the subject of a retaliatory firing around two months after the rumor first circulated. Title VII does not permit employers to avoid liability for a hostile work environment by retaliating against their employees in short order after a complaint of harassment.

¹⁰The district court also failed to properly draw factual inferences in favor of Ms. Parker, particularly with respect to the actions and motivations of the RCSI employee who spread the rumor and RCSI management, as required at the motion to dismiss stage. *See Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 783 (4th Cir. 1999) (citation omitted). Adhering to the motion to dismiss standard is especially important in discrimination suits because, as described above, perpetrators and defendants may attempt to improperly recast the actions and motivations as part of a non-actionable “personality conflict.”

II. A Retaliation Claim Need Not Be Based On Actionable Harassment.

The district court held that Ms. Parker could not state a retaliatory termination claim under Title VII because she had not adequately pleaded a harassment claim under Title VII. This is reversible error under *Boyer-Liberto*, in which this Court held that protected activity is not limited to “actually unlawful” employment actions, but also includes actions that a plaintiff “reasonably believes to be unlawful.” *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 282 (4th Cir. 2015) (en banc) (citation omitted). Although Ms. Parker *did* plead “actually unlawful” activity, it would not be a bar to her retaliation claim if she had not.

A prima facie case of retaliation under Title VII, requires a plaintiff to show: (1) that she engaged in a protected activity; (2) that her employer took an adverse employment action against her; and (3) that there was a causal link between the two events. *Ziskie v. Mineta*, 547 F.3d 220, 229 (4th Cir. 2008). “Employees engage in protected oppositional activity when, inter alia, they ‘complain to their superiors about suspected violations of Title VII.’” *Boyer-Liberto*, 786 F.3d at 281 (citation omitted). Protected activity occurs “when she opposes ‘not only . . . employment actions actually unlawful under Title VII but also employment actions [she] reasonably believes to be unlawful.’” *Id.* at 282 (citation omitted).

The only element of retaliation analyzed by the district court was the first—whether Ms. Parker engaged in protected activity. Yet the court failed to address

the binding standard set forth in *Boyer-Liberto*. Instead, it held in conclusory fashion that because Ms. Parker “fail[ed] to establish” her hostile work environment claim, she necessarily “failed to establish, therefore, that her belief was objectively reasonable and, therefore, she cannot establish a prima facie case of retaliation.” J.A. 152 (Tr. 36:17–21). The district court either disregarded *Boyer-Liberto*, despite an extensive discussion of the case in Ms. Parker’s opposition brief, J.A. 63–66 (Opp. 17–20), or assumed—without analysis—that Ms. Parker did not reasonably believe in the unlawfulness of the harassing actions she suffered. In either case, the district court’s impermissibly narrow view of protected conduct was reversible error.

III. An EEOC Charge Need Not Provide The Specific Details Underlying A Sex-Discrimination Termination Claim.

The district court imposed heightened exhaustion requirements not required by Title VII. Specifically, it held that because Ms. Parker, who filed her EEOC charge *pro se*, did not detail RCSI’s “three strikes” policy as part of her sex discrimination termination claim in her EEOC charge, she could not include her sex-based termination claim in her lawsuit. J.A. 146–48 (Tr. 30:6–8, 31:18–32:3).¹¹

¹¹ Ms. Parker pled that she was issued two warnings and immediately fired, J.A. 12 (Compl. ¶ 36), and that RCSI has a “three strikes” rule under which employees are

An EEOC charge must be “sufficiently precise to identify the parties, and to describe generally the action or practices complained of,” 29 C.F.R. § 1601.12(b), and to “ensure[] that the employer is put on notice of the alleged violations,” *Miles v. Dell, Inc.*, 429 F.3d 480, 491 (4th Cir. 2005). Title VII does not require that a plaintiff state every possible factual allegation in support of a claim of discrimination, particularly because Title VII “sets up a remedial scheme in which laypersons, rather than lawyers, are expected to initiate the process.” *Sydnor v. Fairfax Cty., Va.*, 681 F.3d 591, 594 (4th Cir. 2012) (citing *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 402 (2008)). “It would be inconsistent with this framework to require untrained parties to provide a detailed essay to the EEOC in order to exhaust their administrative remedies.” *Id.*

Ms. Parker filed an EEOC charge stating that she was “discriminated, retaliated and discharge[d] due to my sex [Female] and participation in a protected activity,” and describing generally the events and her firing. J.A. 37–38 (EEOC Charge). As one piece of evidence to prove this unlawful conduct, Ms. Parker has cited RCSI’s discriminatory application of its “three strikes rule,” under which male employees were generally not fired even after receiving three or more warnings, but she, a female employee, was fired after only two warnings. J.A. 12–

subject to termination after receiving three written warnings” that was disparately enforced based on sex, J.A. 13 (Compl. ¶ 39).

13 (Compl. ¶¶ 36–39). The discriminatory application of the three strikes rule to Ms. Parker is *evidence* that she was discriminatorily discharged; it is not, as the court below implied, a separate claim that had to be separately exhausted before the EEOC.

In the alternative, Ms. Parker’s allegations about the three strikes rule are reasonably related to her EEOC charge and would follow from a reasonable administrative investigation into either her discriminatory termination or retaliation claims. *See Smith v. First Union Nat’l Bank*, 202 F.3d 234, 247 (4th Cir. 2000) (“If a plaintiff’s claims in her judicial complaint are reasonably related to her EEOC charge and can be expected to follow from a reasonable administrative investigation, the plaintiff may advance such claims in her subsequent civil suit.”)

Accordingly, there was no basis to dismiss Ms. Parker’s discriminatory termination claim for failure to exhaust.

CONCLUSION

The district court committed multiple, clear errors in interpreting and applying Title VII in this matter. Its rationale is contrary to precedent and would allow harmful sex-based harassment, sex-based termination, and retaliation in this case, and open the door for similar unjust results in future cases. It should therefore be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify the following in accordance with Fed. R. App. P. 32(g)(1):

1. This brief complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. R. 32(f), this brief contains 6500 words according to the word processing software Microsoft Word 2010.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type style.

Dated: May 30, 2018

/s/ Kathleen Hartnett
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APPENDIX: INTERESTS OF AMICI CURIAE

A Better Balance is a national non-profit legal advocacy organization based in New York, NY and Nashville, TN founded with the goal of ensuring that workers can meet the conflicting demands of their jobs and family needs, and that women and mothers can earn the fair and equal wages they deserve, without compromising their health or safety. Through legislative advocacy, litigation, research, and public education, A Better Balance has advanced many pioneering solutions on the federal, state, and local levels designed to combat gender-based discrimination and level the playing field for women and families. The organization also runs a free legal clinic in which the discriminatory treatment of women in violation of Title VII and other state and local laws can be seen firsthand.

The **American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME)** is a labor organization with 1.6 million members in hundreds of occupations who provide vital public services in 46 states, the District of Columbia, and Puerto Rico in both the public and private sectors. On behalf of its diverse membership, AFSCME has been a leader among unions in calling for equality for all workers regardless of sex or gender. AFSCME strongly believes that harassment based on rumors which disproportionately stigmatize women—

such as those at issue in this case—must be actionable under Title VII in order for the workplace to be truly free from discrimination based on sex or gender.

The **American Association of University Women (AAUW)** was founded in 1881 by like-minded women who had challenged society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports equitable access and advancement in employment, workplaces free of harassment and retaliation, and vigorous enforcement of employment discrimination statutes.

For more than 100 years the **American Sexual Health Association** has addressed issues of sexual health in the United States. We believe strongly that the workplace should be an environment free of sexual harassment and discrimination. We believe it is essential that laws designed to protect workers from discrimination on the basis of sex and gender stereotypes must be vigorously enforced.

The **Black Women's Roundtable (BWR)** is an intergenerational civic engagement network of the 501(c)(3) organization, the **National Coalition on Black Civic Participation**. BWR comprises a diverse group of Black women civic

leaders of international, national, regional and state-based organizations and institutions. Together, the BWR membership represents the issues and concerns of millions of Americans and families who live across the United States and around the world. At the forefront of championing just and equitable public policy on behalf of Black women, BWR promotes their health and wellness, economic security, education and global empowerment as key elements for success. These issues are interconnected and BWR seeks to ensure that economic security policies advance Black women's equal access and participation in all aspects of the workplace, including freedom from sex/race bias and discrimination and sexual harassment in all its forms.

The **California Women Lawyers (CWL)** is a non-profit organization that was chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, to eliminate all inequities based on sex, and to provide an organization for collective action and expression related to those purposes. CWL participates as amicus curiae in a wide range of cases to secure the equal treatment of women and other classes of persons under the law.

Champion Women is a non-profit providing legal advocacy for girls and women in sports. Our issues include equal sports participation, treatment,

scholarships, sexual harassment and retaliation, employment and LGBT discrimination.

The **District of Columbia Coalition Against Domestic Violence (DCCADV)**, founded in 1986 and incorporated in the District of Columbia, is a non-profit organization serving as the professional association for the District's domestic violence service providers and is the primary representative of battered women and their children in the public policy arena. Members of DCCADV share the goal of ending domestic violence, community violence, and institutional violence through education, outreach, public policy development, and comprehensive, trauma-informed services for survivors. DCCADV has a vested interest in assuring that our human right to be free from harm is recognized and protected. The Universal Declaration of Human Rights codifies various fundamental human rights, including the right to life, the right to non-discrimination, the right to freedom from torture and cruel, inhuman or degrading treatment, and the right to judicial remedies.

End Rape on Campus (EROC) is a national 501(c)(3) nonprofit organization that works to end campus sexual violence through direct support for survivors and their communities; prevention through education; and policy reform at the campus, local, state, and federal levels. We seek to change culture in order to

create a world free from sexual violence, and believe that all should have access to an education and world free from violence.

Equal Rights Advocates (ERA) is a national non-profit legal advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. ERA works to advance gender equity and economic security for women and families through a combination of litigation, policy reform, direct service, and community outreach and education. Since its founding in 1974, ERA has represented plaintiffs in numerous employment-related civil rights cases, including the first case in the Ninth Circuit to establish that sexual harassment is a form of discrimination prohibited by Title VII of the Civil Rights Act of 1964, *Miller v. Bank of America*, 600 F.2d 211 (9th Cir. 1979). ERA has appeared as amicus curiae in numerous sexual harassment and retaliation cases in this Court.

Family Values @ Work is a national network of 27 state and local coalitions helping spur the growing movement for family-friendly workplace policies such as paid sick days and family leave insurance. Our coalitions represent a diverse, nonpartisan group of more than 2,000 grassroots organizations, ranging from restaurant owners to restaurant workers, faith leaders to public health professionals, think tanks to activists for children, seniors, and those with

disabilities. We support this brief because the impact of this sexual harassment case on working women is precedent setting.

Founded in 1987, the **Feminist Majority Foundation (FMF)** is a national organization dedicated to women's equality, reproductive health, and the empowerment of women and girls in all sectors of society. FMF engages in research and public policy development, public education programs, grassroots organizing projects, and leadership training and development programs. Through its work, FMF seeks to end sex discrimination and advance the legal, social, economic, and political equality of women, people of color, and LGBTQ individuals. FMF is a strong advocate for economic justice for women at all stages of their lives and has supported efforts to ensure that women's right to participate in the workforce is not limited by sex or gender stereotypes.

Gender Justice is a non-profit legal advocacy organization based in the Midwest that eliminates gender barriers through impact litigation, policy advocacy, and education. As part of its mission, Gender Justice helps courts, employers, schools, and the public better understand how gender discrimination is perpetuated and what can be done to ensure equal rights for all. As part of its impact litigation program, Gender Justice represents individual citizens and provides legal advocacy as amicus curiae. Gender Justice has an interest in protecting and enforcing

women's legal rights in the workplace, and in the proper interpretation of the Civil Rights Act of 1964 and other civil rights laws.

Girls for Gender Equity (GGE) is a youth development and advocacy organization committed to the physical, psychological, social and economic development of girls and women, cis and trans, and LGBTQ/gender fluid youth of color. GGE's approaches this work through the lens of intersectional black feminism, to that end, GGE is deeply committed to the eradication of race and gender based violence, exclusion and discrimination. Workplace discrimination based on sex or gender stereotype is uniquely harmful in the ways that it thwarts the earning potential and harms the well-being of cis and trans girls and women, and gender fluid people of color.

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, is the largest Jewish and women's membership organization in the United States, with over 330,000 Members, Associates, and supporters nationwide. While traditionally known for its role in developing and supporting health care and other initiatives in Israel, Hadassah has a proud history of protecting the rights of women and the Jewish community in the United States. Hadassah believes each individual has the right to study and work in an environment that promotes equal opportunities and prohibits discriminatory practices, including sexual harassment and assault.

The **Harvard Law School Gender Violence Program** works to prevent and address myriad forms of gender-based discrimination. This case represents an important example of sex discrimination based on gender stereotypes that directly harm women. We work to protect women's rights to be full and equal citizens wherever they are: at home, at work, at school, on the street. All of these rights are related and must be protected, especially in cases such as the present one.

Lawyers Club of San Diego is a 1,300-plus member legal association established in 1972 with the mission “to advance the status of women in the law and society.” In addition to presenting educational programs and engaging in advocacy, Lawyers Club participates in litigation as amicus curiae where the issues concern the advancement of status of women in the law and society. Lawyers Club joins this amicus brief because eradicating sex and gender based stereotypes and discrimination is imperative to ensure that women are respected in the workplace and can meaningfully advance in their chosen careers.

The **League of Women Voters of the United States** envisions a democracy where every person has the desire, the right, the knowledge and the confidence to participate. We believe in the power of women to create a more perfect democracy. The League of Women Voters supports equal rights and opportunities for all, regardless of sex. The League supports action to bring laws into compliance with the ERA in order to eliminate or amend laws that have the effect of discrimination

on the basis of sex, to promote laws that support the goals of the ERA, and to strengthen the enforcement of laws that promote greater equality among the sexes.

Legal Aid at Work (formerly the Legal Aid Society – Employment Law Center) (LAAW), founded in 1916, is a public interest legal organization that advances justice and economic opportunity for low-income people and their families at work, in school, and in the community. Since 1970, LAAW has represented low-wage clients in cases involving a broad range of employment-related issues, including sexual harassment and retaliation. LAAW's interest in preserving the protections afforded employees by this country's antidiscrimination laws is longstanding.

Legal Momentum: The Women's Legal Defense and Education Fund is the nation's oldest non-profit legal advocacy organization for women, www.legalmomentum.org. Established in 1970, Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. For example, Legal Momentum was the leading advocate for the landmark Violence Against Women Act and its subsequent reauthorizations. Legal Momentum has litigated cutting-edge gender-based employment discrimination cases, including *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and has participated as amicus curiae on leading cases in this area, including *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), *Burlington Industries, Inc. v. Ellerth*,

524 U.S. 742 (1998), *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), and *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993). Legal Momentum has developed numerous resources and appeared before courts in many cases concerning the right to be free from sex discrimination and gender stereotypes, including appearing as counsel in *Nguyen v. INS*, 533 U.S. 53 (2001), and *Miller v. Albright*, 523 U.S. 420 (1998), and as amicus curiae in *U.S. v. Virginia*, 518 U.S. 515 (1996), *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), and *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982).

Legal Voice is a nonprofit public interest organization in the Pacific Northwest that works to advance the legal rights of women and girls through litigation, legislation, and public education on legal rights. Since its founding in 1978 as the Northwest Women’s Law Center, Legal Voice has been at the forefront of efforts to combat sex discrimination in the workplace, in schools, and in public accommodations. In addition, Legal Voice has worked to advance women’s economic security by supporting policies that help women in the workplace, including paid leave for survivors of gender-based and intimate partner violence, “ban the box” laws that limit pre-employment inquiries about applicants’ criminal history, pregnant workers’ rights, and equal pay.

The **Maine Women's Lobby** works to improve the well-being of Maine women, including freedom from violence, freedom from discrimination and economic security. Sexual harassment relates to all of these issues.

Medical Students for Choice is a grassroots advocacy organization representing medical students seeking access to family planning education. MSFC's members are entering a professional world that contains many gender-based inequities and, as such, the issues in this case are critical to success in their future profession.

The **National Asian Pacific American Women's Forum (NAPAWF)** is the only national, multi-issue Asian American and Pacific Islander (AAPI) women's organization in the country. NAPAWF's mission is to build a movement to advance social justice and human rights for AAPI women, girls, and transgender and gender non-conforming people. NAPAWF approaches all of its work through a reproductive justice framework that seeks for all members of the AAPI community to have the economic, social, and political power to make their own decisions regarding their bodies, families, and communities. Our work includes fighting for economic justice for AAPI women and advocating for the adoption of policies that protect the dignity, rights, and equitable treatment of AAPI women workers.

The **National Alliance to End Sexual Violence (NAESV)** is the voice in Washington for the 56 state and territorial sexual assault coalitions and 1300 rape crisis centers working to end sexual violence and support survivors. The rape crisis centers in NAESV's network see every day the widespread and devastating impacts of sexual violence upon survivors including sexual harassment and retaliation in the workplace. We oppose any impediments to survivors feeling safe to come forward, receive support, and seek justice.

The **National Crittenton Foundation (TNCF)** works for the right of girls, young women and women to achieve their potential without enduring sexual violence including harassment and discrimination based on gender. In this #metoo moment, TNCF believes that it is particularly crucial that courts understand how to assess and adjudicate claims of sexual harassment.

The **National Employment Law Project (NELP)** is a non-profit legal and research organization with nearly 50 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of labor and employment laws, including protections against discrimination, harassment and retaliation based on gender. NELP has litigated and participated as *amicus curiae* in numerous cases in federal circuit courts, state

courts, and the U.S. Supreme Court addressing the importance of enforcement of labor and employment protections for all workers.

The **National Employment Lawyers Association (NELA)** is the largest professional membership organization in the country comprising lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been treated unlawfully in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace.

The **National Organization for Women (NOW) Foundation** is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. Established in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist grassroots activist organization in the United States, with hundreds of thousands of members and contributing supporters in hundreds of chapters in all 50 states and the District of Columbia. NOW

Foundation advocates for equal pay for women and for workplaces free of sex- and race-based discrimination as protected under Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Further, we support the right of persons to have their complaints about discriminatory pay or discriminatory treatment in the workplace properly adjudicated.

The **National Partnership for Women & Families** (formerly the Women's Legal Defense Fund) is a national advocacy organization that promotes fairness in the workplace, reproductive health and rights, quality health care for all, and policies that help women and men meet the dual demands of their jobs and families. Since its founding in 1971, the National Partnership has worked to advance women's equal employment opportunities and health through several means, including by challenging discriminatory employment practices in the courts. The National Partnership has fought for decades to combat sex discrimination, including sexual harassment, and to ensure that all people are afforded protections against discrimination under federal law.

The **National Women's Political Caucus (NWPC)** strongly supports women's equity in the work place, including freedom from harassment, whether sexual or otherwise.

The **Oklahoma Coalition for Reproductive Justice** is a coalition of organizations and individuals promoting reproductive justice in Oklahoma through

education, empowerment, and advocacy. We believe that reproductive justice includes the right to have or not to have a child and respect for families in all their forms. It supports access to sexual education, contraception, abortion care and pregnancy care as well as to the resources needed to raise children in safe and healthy circumstances, with good schools and healthcare and other elements necessary for bright futures. It encompasses respect for women, their partners, and families, for sexuality and for gender differences. It respects human rights and the separation of church and state.

People for the American Way Foundation (PFAWF) is a nonpartisan civic organization established to promote and protect civil and constitutional rights, including equality and non-discrimination for all. Founded in 1981 by a group of civic, educational, and religious leaders, PFAWF now has hundreds of thousands of members nationwide. Over its history, PFAWF has conducted extensive education, outreach, litigation, and other activities to promote these values. PFAWF strongly supports the principle that sex discrimination, including sexual harassment, is illegal under federal law, whether carried out through physical misconduct, retaliatory job action, or malicious rumors based on gender stereotypes that harm women and men in the workplace.

The **Service Employees International Union (SEIU)** is an international labor organization representing approximately two million working women and men in the United States and Canada employed in the private and public sectors.

SisterReach, founded October 2011, is a Memphis, TN based grassroots 501(c)(3) non-profit supporting the reproductive autonomy of women and teens of color, poor and rural women, LGBT+ and gender non-conforming people and their families through the framework of Reproductive Justice. Our mission is to empower our base to lead healthy lives, raise healthy families and live in healthy communities. We provide comprehensive reproductive and sexual health education to marginalized women, teens and gender non-conforming people, and advocate on the local, state and national levels for public policies which support the reproductive health and rights of all women and youth.

The **Southwest Women's Law Center (SWLC)** is a non-profit legal advocacy organization dedicated to the advancement and protection of women's rights. Our goal is to ensure that women reach their life and work potential without harassment or sex discrimination, as we advocate to eliminate the full range of stereotypes and biases that women often face. SWLC focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, and has participated as an *Amicus Curiae* in a range of cases before the Supreme Court and Federal Courts of

Appeals to secure equal treatment for women under the law. Accordingly, SWLC is uniquely qualified to comment in the matter of *Parker v. Reema Consulting Services, Inc.*

Stop Sexual Assault in Schools works to connect the dots between sex discrimination in schools and in the workplace.

The National Urban League is a historic civil rights organization dedicated to economic empowerment in historically underserved urban communities.

Founded in 1910 and headquartered in New York City, the National Urban League improves the lives of more than two million people annually through direct service programs, including education, employment training and placement, housing, and health, which are implemented locally by more than 90 National Urban League affiliates in 300 communities across 36 states and the District of Columbia. The National Urban League works to provide the guarantee of civil rights for the underserved in America. Ruth Standish Baldwin co-founded the National Urban League more than a century ago and the equal treatment of women has always been, and remains, one of the National Urban League's most important priorities.

The **Women's Law Center of Maryland, Inc.** is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women's Law Center achieves its mission through direct legal

representation, research, policy analysis, legislative initiatives, education, and implementation of innovative legal-services programs to pave the way for systematic change. Through its various initiatives, including its Employment Law Hotline, the Women's Law Center pays particular attention to issues related to gender discrimination, sexual harassment, and employment law.

The mission of **Women Employed** is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed strongly believes that sex discrimination, including retaliation for complaining about it, is one of the main barriers to achieving equal opportunity and economic equity for women in the workplace.

Founded in 1917, the **Women's Bar Association of the District of Columbia (WBA)** is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, we continue to pursue our mission of maintaining the honor and integrity of the profession; promoting the administration of justice; advancing and protecting the interests of women lawyers; promoting their mutual improvement; and encouraging a spirit of friendship among

our members. We believe that the administration of justice includes women's right to be free from discrimination based on their sex.

Women's Bar Association of the State of New York is the second largest statewide bar association in New York and one of the largest women's bar associations in the United States. It's more than 4,200 members in its nineteen chapters include esteemed jurists, academics, and attorneys who practice in every area of the law, including constitutional and civil rights. WBASNY is dedicated to fair and equal administration of justice, and it has participated as an amicus in many cases before federal and state courts as a vanguard for the rights of women, minorities, LGBT persons, and others.

The **Women's Law Project (WLP)** is a nonprofit legal advocacy organization dedicated to creating a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, we engage in high impact litigation, policy advocacy, and public education. Founded in 1974, the WLP has a long and effective track record on a wide range of legal issues related to women's health, legal, and economic status. The WLP has a strong interest in the eradication of sex discrimination, including the sexual harassment that pervades our workplaces and harms women's health and economic status. It is essential that the courts properly apply and enforce the law with respect to claims

of sexual harassment and retaliation for reporting sexual harassment in order to rid society of such pernicious conduct.

CERTIFICATE OF SERVICE

I certify that on May 30, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy by First Class U.S. Mail.

Dated: May 30, 2018

Respectfully submitted,

/s/ Ashleigh Jensen

Ashleigh Jensen

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

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COUNSEL FOR: Amici Curiae The National Women's Law Center, et al.

as the (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

/s/ Kathleen Roberta Hartnett (signature)

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CERTIFICATE OF SERVICE

I certify that on 5/30/2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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