18-153

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

LARYSSA JOCK, CHRISTY CHADWICK, MARIA HOUSE, DENISE MADDOX, LISA MCCONNELL, GLORIA PAGAN, JUDY REED, LINDA RHODES, NINA SHAHMIRZADI, LEIGHLA SMITH, MARIE WOLF, DAWN SOUTO-COONS,

Plaintiffs-Counter-Defendants-Appellants,

JACQUELYN BOYLE, LISA FOLLETT, KHRISTINA RODRIGUEZ, KELLY CONTRERAS,

Plaintiffs-Counter-Defendants,

—against—

STERLING JEWELERS INC.,

Defendant-Counter-Claimant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF *AMICI CURIAE* NATIONAL WOMEN'S LAW CENTER *ET AL.* IN SUPPORT OF PLAINTIFFS-COUNTER-DEFENDANTS-APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29, the undersigned counsel certifies that none of the *amici curiae* is a nongovernmental entity with a parent corporation or a publicly held corporation that owns 10 percent or more of its stock. This representation is made in order that the judges of this Court may evaluate possible disqualification or recusal. [1]

Dated: March 14, 2018

/s/ Emily Martin
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[1] In accordance with Fed. R. App. P. 29(a)(4)(E) and Local Rule 29.1, *Amici* state that no party's counsel authored this brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *Amici* or their members—contributed money that was intended to fund preparing or submitting the brief.

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INTERESTS OF *AMICI CURIAE*

The National Women's Law Center is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities. Since its founding in 1972, the Center has focused on issues of key importance to women and girls, including economic security, employment, education, and health, with special attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination. As part of this work, the Center fights for equal opportunities and fair treatment for women in all aspects of their employment. The Center has participated as counsel or Amicus Curiae in a range of cases before Circuit Courts and the U.S. Supreme Court to secure the equal treatment of women and other protected classes under the law. *Amici* are a coalition of civil rights groups and public interest organizations committed to preventing, combating, and redressing sex discrimination and protecting the equal rights of women. Detailed statements of interest are included in Appendix A.

The Center files this brief with the consent of all parties.

BACKGROUND AND SUMMARY OF ARGUMENT

Plaintiffs, a group of women who are current and former employees of Sterling Jewelers, filed a class action suit against their employer in 2008 challenging sex discrimination in pay and promotions. All Sterling employees had to sign arbitration agreements as a condition of employment, and Plaintiffs did not dispute that they had voluntarily agreed to arbitrate, so this class sex discrimination claim was referred to arbitration. The arbitrator, after several years of procedural battles and extensive discovery, certified a class now composed of approximately 70,000 women to pursue their pay and promotion disparate impact claims for declaratory and injunctive relief.[2] The district court has now vacated the arbitrator's certification decision that had permitted all of the women to pursue their disparate impact claims in one unified proceeding and the Plaintiffs have appealed.

[2] The Plaintiffs originally pled pay and promotion claims under Title VII for both disparate treatment and disparate impact, and under the Equal Pay Act for denial of equal pay. The arbitrator has now certified an opt-in class for trial of the Equal Pay Act ("EPA") claim, and that class is composed of approximately 10,000 women who opted in. The arbitrator did not find the Title VII disparate treatment claims appropriate for class resolution, but certified a class for declaratory and injunctive relief for the disparate impact claim, with the proviso that class members would be given notice and the opportunity to opt out. JA 595-96. If the class prevails, there will be separate proceedings to determine the appropriate monetary relief for each class member. JA 594-96 & n. 425.

Amici submit this brief in support of Plaintiffs-Appellants because the district court erred in vacating the arbitrator's well-reasoned class certification award. The court's decision has robbed nearly 60,000 women of their right to pursue their sex discrimination claims in a class case that includes all of the women who faced similar discrimination.[3]

Although Title VII was enacted over 50 years ago, sex discrimination is still rampant in American workplaces. The Equal Employment Opportunity Commission ("EEOC") received a total of 84,254 workplace discrimination charges in fiscal year 2017, of which 25,605, or 30.4 percent of the total, charged sex discrimination. *See* Newsroom Release available at https://www.eeoc.gov/eeoc/newsroom/release/1-25-18.cfm. Individual women often are not in a position to bear the costs and burdens of opposing entrenched discrimination. Class litigation is an important mechanism to challenge systemic sex discrimination and effect sweeping institutional changes without placing the burden of making that case on an individual plaintiff. The class proceeding contemplated by the arbitrator in this case, mandating declaratory and injunctive relief for all class members whether or not they opt in, provides practical benefits to the class and also provides a voice to women who would otherwise be

[3] Ten thousand women have opted in to the EPA case; thus the district court's ruling leaves approximately 60,000 of the 70,000 women determined by the arbitrator to be a part of the class without a class remedy.

marginalized because a fear of retaliation prevents their coming forward to opt in to the case. There are three principal reasons this Court should reverse the district court's decision.

First, this Court should weigh the central importance of class actions in enforcing Title VII. Fostering the ability to fight injustice through collective action is the primary benefit of class actions, and one of particular value and importance to women struggling to survive and earn a fair wage from employers who persist in making employment decisions based on outmoded sexist criteria. Class adjudication has served important national interests in combatting sex discrimination. Women have used class suits to challenge facially discriminatory policies, neutral job requirements and rules that adversely affect women while serving no business necessity, pay and promotion policies that impede women's opportunities for advancement, and systemic sexual harassment. Given the historic gains made by women through class actions, this Court should ensure this important vehicle for challenging sex discrimination remains available to all of the women affected by Sterling's discriminatory practices in this case.

Second, this Court should affirm the arbitrator's reasoning that the disparate impact claims for injunctive and declaratory relief in this case are quintessentially appropriate for class resolution. The sex discrimination claims at issue would be more difficult to bring in individual or opt-in class proceedings because the

necessary evidence for proving these claims cannot readily or affordably be developed by individuals or smaller groups. Additionally, the classwide remedies essential to prevent further sex-based discrimination against all the women affected by Sterling's policies potentially would be unavailable in an individual or opt-in class proceeding. Further, these disparate impact claims would not be appropriately or fairly resolved through the opt-in proceedings the district court has mandated because class members' legitimate and realistic fear of retaliation would prevent many women from opting in.

Third, the district court's concern with shielding the putative rights of class members who have not opted in should not become a sword to deprive them of the significant benefits of classwide adjudication of this sex discrimination disparate impact claim. Likewise, the court's concern that women who have not opted in could collaterally attack the final judgment to Sterling's detriment is legally and factually unfounded.

ARGUMENT

Laryssa Jock and a class of women filed this action ten years ago, and it is now before this Court to resolve whether the arbitrator exceeded her authority in certifying a class that included all women affected by Sterling's discriminatory pay and promotion policies from 2004 until the time of trial. Although this Court

previously reversed the district court's decision that the arbitrator had exceeded her authority in deciding that the arbitration agreement manifested the parties' intent to permit class procedures and remedies, JA476 (*Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 127 (2d Cir. 2011)), the district court resurrected its own view of the intent of the parties in its decision vacating the arbitrator's class determination. SA6. The district court expressly stated that "it is the law of the case" (based on its **overturned** 2010 decision) that the agreement "does not" authorize class procedures. *Id.* Having so held, the district court noted in its current decision that it did not have to decide whether, if the agreement permitted class procedures, the arbitrator would have had the authority to bind absent class members, i.e., those who had not opted in. *Id*. at n.2. Although the district court's legal errors in reaching its decision have been persuasively presented by the Plaintiffs, *see* Plaintiffs' Br. at 22-39, there are also important policy considerations implicating the broader ongoing fight against pervasive sex discrimination in the workplace that should animate this Court's consideration of the question presented here.

I. Class litigation is vital to enforcement of Title VII's ban on sex discrimination.

Courts have eloquently condemned the discrimination prohibited by Title VII, calling it "'one of the most deplorable forms of discrimination known to our society,'" because it impacts "'the ability to provide decently for one's family in a job or profession for which [s]he qualifies or chooses.'" *Hardin v. Stynchcomb*,

691 F.2d 1364, 1369 (11th Cir. 1982) (class action sex discrimination case) (quoting *Culpepper v. Reynolds Metals Co.*, 421 F.2d 888, 891 (5th Cir. 1970)). When Congress enacted Title VII, it observed that discrimination on the basis of sex (and the other prohibited bases) is essentially class-based discrimination and that many claims therefore "are necessarily class action complaints." 118 Cong. Rec. 7166, Conference Report, U.S. Sen. Labor & Pub. Welfare, Labor Subcomm., reprinted in Legislative History of the Equal Employment Opportunity Act of 1972 at 1847 (GPO Nov. 1972); *see also* S. Rep. No. 92-415, 92nd Cong., 1st Sess. 27 (1972) (because "title VII actions are by their very nature class complaints, . . . any restriction on such actions would greatly undermine the effectiveness of title VII"). The Supreme Court has also recognized that Title VII suits "are by their very nature class complaints," *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 393 n.13 (1977), and that often Title VII suits are "class suits, involving classwide wrongs," *East Texas Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 405 (1977).

The viability of class actions is particularly important in the struggle to achieve equal opportunity on the basis of gender. First, when women can come together to challenge discriminatory policies they can achieve more efficient and consistent results in eradicating discrimination, and thus better deter future discrimination by their own employer and others who see the results of such successful challenges. Second, women in class suits can more effectively vindicate

their rights to be free from systemic discrimination because they can share the costs of litigation that could not reasonably be borne by a single plaintiff. Finally, women can be more effectively shielded from retaliation when they join a class action than when they take on their employers individually.

A. Class actions assure efficiency and consistency of results.

The efficiency and consistency of results in class litigation is readily apparent in reviewing a few such challenges to overtly discriminatory policies brought by private individuals and the EEOC in its analogous representative actions. For example, the EEOC challenged the sex-based denial of access to craft positions and management opportunities in *General Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 321 (1980), and the refusal to hire women for pool attendant positions in *EEOC v. Guardian Pools, Inc*., 828 F.2d 1507, 1508-09 (11th Cir. 1987). In *Guardian Pools*, the EEOC also obtained an injunction against the company's practice of advertising positions for a specific gender. *Id.*

Private class actions brought by women successfully challenged: male and female job classifications in nursing that resulted in higher wages for men, *Am. Nurses' Assoc. v. Illinois*, 783 F.2d 716, 718 (7th Cir. 1986); a policy refusing to hire women for positions in the male section of a jail, even when their test scores and other qualifications exceeded the requirements, *Hardin*, 691 F.2d at 1365-66; a rule denying women reinstatement to their prior jobs following maternity leave, *In*

re Sw. Bell Tel. Co. Maternity Ben. Litig., 602 F.2d 845, 846-47 (8th Cir. 1979); a no-marriage rule applied only to female flight attendants, *Inda v. United Airlines, Inc.*, 565 F.2d 554, 556 (9th Cir. 1977); a policy requiring women to make larger pension contributions than men; *City of Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702, 704 (1978); a law that did not permit women to tend bar, *McCrimmon v. Daley*, 418 F.2d 366, 367 (7th Cir. 1969); and an employer rule that did not permit women to bid for jobs requiring lifting of more than 35 pounds, *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 714 (7th Cir. 1969); *see also Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971) (class of men challenged airline's policy of hiring only women as flight attendants).

In all of these cases, class actions permitted courts to fashion complete and consistent relief that eliminated discriminatory policies and rules and benefited all women in the class.

B. Class action cost sharing assists women in vindicating their rights.

Some class suits highlight the importance of cost sharing to the prosecution of claims of systemic discrimination. The cost of developing the expert evidence to prove discrimination in these cases typically would be prohibitive on an individual basis. For example, women filed a class action to challenge the height and weight requirements for corrections officer positions in an Alabama state penitentiary in *Dothard v. Rawlinson*, 433 U.S. 321, 323-24 (1977). In the district

court the *Dothard* plaintiffs presented expert testimony from a statistician and a research analyst to demonstrate the labor market availability of women in Alabama and to assess the impact of the height and weight requirements in excluding women from correctional officer positions. *Mieth v. Dothard*, 418 F. Supp. 1169, 1178-79 (M.D. Ala. 1976). They also presented expert testimony from prison administrators on the effect of height and weight differences on the performance of correctional officers. *Id.* A single plaintiff likely could not have borne the cost of financing this litigation.

Similarly, in the class action challenging the fetal protection policy in *Int'l Union v. Johnson Controls, Inc*., 499 U.S. 187, 190 (1991), the women and their union needed the testimony of a number of medical doctors and scientists to dispute the employer's rationale for barring all women except those who could medically document infertility from certain higher-paying jobs. They ultimately prevailed in demonstrating that the policy constituted facial discrimination on the basis of sex that was not defensible as a bona fide occupational qualification ("BFOQ"), and that result would not have been possible without the class sharing in the costs of developing and presenting the expert medical testimony.

Women have filed numerous class actions challenging pay and promotion policies and criteria that impeded their opportunities for advancement, and because their proof typically required extensive expert statistical evidence, these cases

likely could not have been affordably developed on behalf of an individual. For example, in *Bouman v. Block*, 940 F.2d 1211, 1217 (9th Cir. 1991), female officers needed statistical evidence to establish the impact of the promotion test they took and to rebut the expert for the county who testified that the difference in scores on the test was attributable to differing levels of experience, in that women were more likely to be first time test-takers because they had not been in the sheriff's department as long as the men, and thus had made fewer bids for promotion. Similarly, in *Capaci v. Katz & Besthoff, Inc.*, 711 F.2d 647, 651 (5th Cir. 1983), the class needed an expert statistician and economist to develop their claims of gender discrimination in hiring and promotion practices based on census data about the availability of women in the relevant labor market.

When women are able to join together to share the costs of challenging pay and promotion policies, they are able to obtain injunctive relief that benefits all members of the class, and that relief is often of critical importance in equalizing job opportunities for women. Recent class actions have resulted in settlement agreements implementing significant revisions to discriminatory policies and almost all include future injunctive relief. For example, female warehouse workers discriminated against in pay, promotion, and working conditions settled their claim for $8 million and revision of policies in *Ellis v. Costco Wholesale Corp.*, No. 3:04-cv-03341 (N.D. Cal. 2013). Similarly, women who challenged

discriminatory criteria for correction officer positions settled for $1 million and, importantly, a new policy permitting women to participate in a priority hiring process in *Esterling v. Conn. Dep't of Correction*, No. 08-826 (D. Conn. 2013).

Female financial advisors have brought a number of challenges to discrimination in pay and promotions and have resolved their cases for significant monetary relief and injunctive relief promising changes to those policies. *See, e.g.*, *Carter v. Wells Fargo Advisors, LLC*, No. 09-cv-01752 (D.D.C. 2011) (Wells Fargo settled female financial advisors' claims for $32 million and future injunctive relief); *Fassbender Amochaev v. Citigroup Global Markets, Inc., d/b/a Smith Barney*, No. C051-298 (N.D. Cal. 2008) (class of women financial advisors settled claim of discrimination in pay and professional support for $33 million and future injunctive relief); *Augst-Johnson v. Morgan Stanley DW Inc.*, No. 1-06-cv-01142 (D.D.C. 2007) (class of female financial advisor trainees in Global Wealth Management Group settled pay and promotion discrimination claims for $46 million and future injunctive relief).

The court-approved settlement in *Carlson et al. v. C.H. Robinson Worldwide, Inc.*, No. 02-cv-03780 (D. Minn. 2006), further illustrates the significance of injunctive relief in changing the barriers to women's advancement. In that class action women challenged pay and promotion discrimination, and Carlson agreed to future injunctive relief providing for the appointment of EEO

specialists, development of a women's peer networking circle, implementation of a mentoring program for female sales and operations employees with the goal of developing more female employees for management positions, and the adoption of client entertainment guidelines prohibiting entertainment at inappropriate venues. In another case prosecuted by a private class and the EEOC, women challenged discrimination in hiring, promotion, demotion, discharge, and sexual harassment and settled the case for $47 million and extensive injunctive relief, including measures to educate workers and managers on prevention of discrimination, penalties for managers who discriminate, creation of a hotline to report violations, and videotaped messages from the company's president acknowledging the seriousness of the sex discrimination which had occurred. *Wilfong and EEOC v. Rent-A-Center*, No. 00-680 (S.D. Ill. 2002).

C. Class actions help shield class members from retaliation.

One of the most significant barriers to pursuit of an individual claim is the fear of retaliation. *See Crawford v. Metro. Gov't of Nashville & Davidson County*, 555 U.S. 271, 279 (2009) ("'[f]ear of retaliation leads many victims of pay and other discrimination to remain silent'" (citation omitted)). This fear can be somewhat alleviated when a group of women comes together and decides to challenge discrimination. All of the cases cited above illustrate the truth of the aphorism that there is strength in numbers. When discriminatory pay and

promotion policies are combined with sexual harassment, the fear of retaliation can be especially acute. For example, women successfully challenged pervasive, company-wide harassment of women and the disparate impact of promotion policies and practices in *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287 (8th Cir. 1997). The class sued their union as well as their employer because the union had done little to protect women who complained about harassment, and instead had defended alleged harassers from discipline, increasing the women's skepticism that grievance procedures could shield them from retaliation by their coworkers. *Jenson v. Eveleth Taconite Co.*, 824 F. Supp. 847, 879 (D. Minn. 1993).

In light of the efficacy and vital role of class adjudication in allowing women to combat entrenched sex discrimination, it would be a setback to the rights and interests of women in this country were the district court's ruling allowed to stand. Despite the impact of 50 years of litigation that has removed many barriers to women's employment opportunities, as noted above discrimination on the basis of sex is still rampant. *See supra* at 3. Issues that have come to light through the #MeToo movement, demonstrating the pervasiveness of workplace sexual harassment and assault, and the number of people who participated in the 2017 Women's March on Washington, which was the largest single-day social protest in

the history of the United States,[4] demonstrate that sex discrimination is of profound concern to millions of Americans, and that the issues involved in review of the district court's decision in this case matter to far more women than the 70,000 class members aggrieved by their treatment by Sterling Jewelers.

II. The claims at issue will be most effectively adjudicated with all women subject to Sterling's discriminatory policies included in the class.

The class claims currently at issue are pay and promotion disparate impact claims for declaratory and injunctive relief, which cannot be litigated as effectively on an individual or opt-in class basis. The Supreme Court has repeatedly emphasized that arbitration of statutory claims is permissible only when it provides for effective vindication of substantive rights. *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228, 235-36 (2013) ("'so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function'") (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 (1985)); *also see Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28

[4] See Jeremy Pressman & Erica Chenoweth, Compilation of Women's March Crowd Size Estimates (estimating between 3,267,134 and 5,246,670 people participated in a Women's March in D.C. or elsewhere in the U.S., not including international marches). https://docs.google.com/spreadsheets/d/1xa0iLqYKz8x9Yc_rfhtmSOJQ2EGgeUVjvV4A8LsIaxY/htmlview?sle=true#gid=0 (last visited March 2, 2018).

(1991) (ability to effectively vindicate cause of action renders arbitration agreement enforceable as to statutory claims). Here the arbitrator thoroughly evaluated the evidence presented and decided that all 70,000 women who had been affected by Sterling's pay and promotion policies could prosecute their claim for injunctive and declaratory relief on a class basis without the need for them to opt in individually. The district court's decision vacating the arbitrator's class determination should be reversed because individual or opt-in class arbitration of the claims will be less effective in demonstrating and remedying the widespread sex discrimination at issue in Sterling's nationwide enterprise, and will not effectively protect class members from retaliation.

A. The class the arbitrator certified should be permitted to prove its disparate impact claims because litigating those claims individually would typically be prohibitively costly.

The right to bring a disparate impact claim is a substantive right. A disparate impact claim is a separate statutory claim, not merely a different method of proving discrimination. *Cf. Parisi v. Godman, Sachs,* 710 F.3d 483, 486 (2d Cir. 2013) (holding that pattern-or-practice is not a substantive claim but an alternate way of proving disparate treatment). A disparate impact claim is doctrinally and statutorily distinct from a disparate treatment claim. 42 U.S.C. § 2000e-2 (a)(2) & (k) (laying out the elements of proof and the defense to a disparate impact claim). It requires proof of a neutral practice that causes a

disparate impact on the basis of sex that the defendant cannot show is job related for the position in question and consistent with business necessity. *Id*. at § 2000e-2 (k)(1)(A)(i). Such a claim does not require a plaintiff to establish a motive or intent to discriminate, but rather the discriminatory effect of a neutral practice considered "fair in form, but discriminatory in operation," which is normally demonstrated with statistical evidence. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971); *Dothard*, 433 U.S. at 328-30 (plaintiff class showed significantly disproportionate exclusionary impact on women of height and weight requirements).

Disparate impact claims are typically proven through the use of expert statistical evidence demonstrating the effect of challenged policies. *See supra* at 9-11 (discussing proof and use of experts in disparate impact cases). The district court's insistence that the Plaintiffs may not proceed with a broad class claim makes the assertion of their claim virtually impossible, thereby rendering the arbitral forum ineffective for vindication of the Plaintiffs' disparate impact claim. The Supreme Court has indicated that the cost-saving and cost-sharing benefits of class actions save "'the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under [Fed.]Rule [Civ. P.] 23.'" *General Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (citation omitted). The Court has also said that class actions

"permit the plaintiffs to pool claims which would be uneconomical to litigate individually." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985).

Although the Court has recently opined that the prohibitive expense of litigating an antitrust suit on an individual basis does not render the arbitral forum ineffective, *Italian Colors*, 570 U.S. at 236, that case is inapposite because the question here is not whether a class waiver makes an arbitral forum ineffective, but whether a voluntary arbitration agreement providing for class proceedings should be nullified. Here the prohibitive cost of individually litigating a disparate impact claim for injunctive relief supports the conclusion that the district court's refusal to give effect to the parties' agreement should be reversed. The members of the class certified by the arbitrator in this case are not merchants and restaurants challenging anti-competitive credit card billing practices, as in *Italian Colors*, but individual women who would not have the means or ability to pursue a disparate impact claim that does not even entail any monetary relief. As the arbitrator observed, this class arbitration is "superior because it provides for inclusion of members who would otherwise be unable to afford independent representation." JA595. The cost of amassing the expert evidence needed to prove the disparate impact of Sterling's pay and promotion practices has been enormous, and no individual worker in Sterling's stores could possibly pay those costs. *See* JA509-566 (reviewing and analyzing the voluminous expert testimony in this case).

B. The class the arbitrator certified should be permitted to litigate its claims because the classwide relief it seeks would otherwise normally be unavailable.

The right to obtain injunctive and declaratory relief to remedy a proven violation is a statutory right guaranteed by Title VII. 42 U.S.C. § 2000e-5(g)(1) (equitable relief for intentional discrimination); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415-23 (1975) (injunctive and other equitable relief available in disparate impact cases just as in disparate treatment cases).

Even if an individual pursuing arbitration in this case conceivably could adduce the statistical evidence to prove the discriminatory effects of Sterling's pay and promotion policies, in the view of many courts she would not be entitled to a classwide injunction to remedy the discrimination she demonstrated. Likewise, in the view of many courts, a small class of opt-in plaintiffs could not obtain broad injunctive relief that would benefit the class of 70,000 women affected by Sterling's promotion and pay practices. As the Supreme Court has cautioned, an injunction should be narrowly tailored to give only the relief to which a plaintiff is entitled. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Courts have construed that cautionary note to preclude classwide injunctive relief in non-class cases. *See, e.g.*, *Sharpe v. Cureton*, 319 F.3d 259, 273 (6th Cir. 2013) (district court erred in granting classwide relief where no class had been certified because "such broad relief is rarely justified"); *Lowery v. Circuit City Stores, Inc.*, 158 F.3d 742, 766

(4th Cir. 1998) (injunction should be no broader or more burdensome to defendant than is necessary to provide relief to the plaintiffs); *Brown v. Trustees of Boston University*, 891 F.2d 337, 361 (1st Cir. 1989) ("[o]rdinarily, classwide relief, such as the injunction here which prohibits sex discrimination against the class . . . is appropriate only where there is a properly certified class"); *Zepeda v. United States I.N.S.*, 753 F.2d 719, 727-28 & n.1 (9th Cir. 1983) ("injunction must be limited to apply only to the individual plaintiffs unless the district court certifies a class of plaintiffs"); *Davis v. Romney*, 490 F.2d 1360, 1366 (3d Cir. 1974) (in putative class action, relief "cannot be granted to a class before an order has been entered determining that class treatment is proper").

C. The opt-in procedure the district court ordered is inappropriate and unfair.

The district court ordered this case to proceed on an opt-in basis, but that is an ineffective approach to litigating the claims in this case which also has no foundation in the law or rules. *See Shutts*, 472 U.S. at 812-13 (rejecting contention that due process concerns require affirmative opt-in). As Plaintiffs point out, the governing rules do not provide for an opt-in class when a disparate impact claim for injunctive and declaratory relief is at issue. Plaintiffs' Br. at 5-6, 54-55. If this decision is upheld, the 60,000 individuals who have not opted in (because that was deemed unnecessary) would only have the option of proceeding individually, but

could not afford to assert their disparate impact claim in those individual proceedings or obtain broad injunctive relief.

Further, requiring all class members to opt in is fundamentally unfair and at odds with one of the primary benefits of class actions – protection from retaliation. Retaliation is rampant and the fear of employer reprisal is a legitimate concern. The number of retaliation charges filed with the EEOC has risen dramatically in recent years, totaling 41,097 in FY 2017 out of 84,254 charges. (Charge data available at https://www.eeoc.gov/eeoc/statistics/enforcement/all.cfm). Thus, even though retaliation is prohibited by Title VII, acts of retaliation occur at an alarming rate and employees' legitimate fear of these consequences undermines their willingness to complain, particularly when they are still employed. The Supreme Court has observed that fear of retaliation suppresses complaints and interferes with effective enforcement of anti-discrimination laws. *See, e.g.*, *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997) (primary purpose of Title VII's antiretaliation provision is "maintaining unfettered access to statutory remedial mechanisms"); *Crawford*, 555 U.S. at 279 (fear of retaliation silences women).

A class action with mandatory or opt-out classes, such as those the arbitrator envisions here, provides the protection of anonymity to women fearful of losing their jobs if still employed, or of being blackballed in the industry even if they are no longer with Sterling. *See* Brooke D. Coleman & Elizabeth G. Porter,

Reinvigorating Commonality: Gender and Class Actions, 92 N.Y. Univ. L. Rev. 898 (2017) ("[Fed.] Rule [Civ. P.] 23(b)(2) class actions, which lack an opt-out mechanism, made it easier for employees to be members of a class without incurring retaliation from their employers."). Jan Michelson, *A Class Act: Forces of Increased Awareness, Expanded Remedies, and Procedural Strategy Converge to Combat Hostile Workplace Environments*, 27 Ind. L. Rev. 607, 639 (1994) (class actions offer a buffer of protection from retaliation). Allowing women to participate in this litigation without having to affirmatively opt in means that all of the women who would not have joined the class because of their well-founded fear of retaliation can take part in the case and benefit from the injunctive and declaratory relief available if the class proves its discrimination claim.

III. Concerns that absent class members who did not opt in will be disadvantaged or would challenge an arbitration award are unwarranted.

The district court vacated the arbitrator's award out of a concern that attempting to bind absent class members who did not opt in to the proceedings would "open the door to collateral lawsuits by absent class members." SA 8. This concern, that absent class members would not be bound by the arbitrator's decision, arises from Justice Alito's concurring opinion in *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 575 (2013) (J. Alito, concurring). In addition to Plaintiffs' compelling argument that in this case all class members consented to the

arbitrator's making these decisions when they individually signed Sterling's arbitration agreements when they were hired, *see* Plaintiffs' Br. at 26-32, there are additional reasons this apparent concern for the rights of so-called absent class members, and for the finality of the arbitrator's judgment, has no relevance in this case.

A. No class member will be aggrieved by a liability determination in these proceedings.

The rights of the absent class members are fully protected by the opt-out procedure the arbitrator has authorized for the adjudication of claims for monetary relief. *See* JA 594-596; *also see Shutts*, 472 U.S. at 812 (due process requires that an absent plaintiff in class action seeking to bind known plaintiffs concerning claims for money judgments be provided with opportunity to opt out). The claims at issue in this certification are claims only for declaratory and injunctive relief, so the monetary remedies which might be thought to create intra-class conflict or to prejudice absent class members are simply not at issue. In contrast, *Oxford Health* involved class claims amounting to an estimated $5 million for the class as a whole, and damages to the named class plaintiff of at least $75,000. *See Sutter v. Oxford Health*, 2005 WL 6795061 at *3 (D. N.J. Oct. 31, 2005). In that case it made sense for Justice Alito to speculate about the possibility of collateral attacks on an unfavorable judgment, but that possibility seems quite remote in this case.

Further, if the class prevails on its disparate impact claim, all class members will benefit from the declaration that Sterling has violated Title VII. No class member would then have to prove the unlawfulness of Sterling's pay and promotion practices in individual proceedings. Each would be entitled to a rebuttable presumption that she should be awarded monetary relief, and she will have the opportunity to opt out of those relief proceedings. The arbitrator has not yet decided how these stage two proceedings will be conducted, JA594-95 n. 425, but this bifurcation of liability and relief issues and shifting burden of proof is entirely consistent with governing legal standards. *See Teamsters v. United States*, 431 U.S. 324, 362 (1977) (holding that once the plaintiff proves classwide discrimination, all affected class members are presumed to be entitled to relief unless the defendant proves that the individuals were not the victims of discrimination).

B. It is unlikely that any class member would challenge the final judgment.

If this Court upholds the arbitrator's class determination, and the Plaintiff class fails to prove its disparate impact claim, the absent class members would be bound by that result because of the claim preclusive effect of an arbitral award. *Pike v. Freeman*, 266 F.3d 78, 90 (2d Cir. 2001). Absent class members are ordinarily bound "except where to do so would violate due process." *Stephenson v. Dow Chemical Co.*, 272 F.3d 249, 260 (2d Cir. 2001) (Agent Orange litigation).

The lynchpin of the due process inquiry is whether the class has had adequate representation, *id*., and in this case the arbitrator has made a finding of adequate class representation that the defendant has not disputed. *See* JA 593.

On the other hand, if absent class members choose to assert individual claims of disparate treatment, they would not be precluded from doing so by the arbitral award in this proceeding, so they would have no need to attack or relitigate the disparate impact award. *Pike,* 266 F.3d at 91-92.

Even if the absent class members were not held to be bound because they were deemed "absent" from the proceedings when class arbitration procedural matters were submitted to the arbitrator, it is difficult to imagine that any class members would be able to adduce superior evidence to prove disparate impact than that developed in this class arbitration to date. *See* JA509-566 (summarizing and analyzing the expert evidence). Since there is no prejudice to either party, and the absent class members stand to benefit from a favorable judgment on liability, the arbitrator's class certification decision should be upheld.

CONCLUSION

For the foregoing reasons, *Amici* urge reversal of the district court's order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Local Rule 32.1(a)(4)(A) because this brief contains 5830 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013, Times New Roman 14-point.

Dated: March 14, 2018

By: /s/ Carolyn L. Wheeler
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CERTIFICATE OF SERVICE

I certify that on March 14, 2017, I filed a copy of the Brief of *Amici Curiae* National Women's Law Center, *et al.*, supporting Plaintiffs-Counter-Defendants-Appellants' appeal seeking reversal, *via* the Court's ECM/ECF filing system and email upon the following counsel:

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APPENDIX: INTERESTS OF *AMICI CURIAE*

AFSCME

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. AFSCME and its local unions are party to thousands of collective bargaining agreements with public and private employers which include arbitration clauses. On behalf of its diverse membership, AFSCME has been a leader among unions in fighting for equality and against discrimination based on sex, including through the arbitration of grievances alleging sex discrimination. While AFSCME is therefore a strong believer in the power of the arbitral process to counteract sex discrimination, that process should not be robbed of the necessary strength to combat such injustice by barring meaningful class relief, which will be the result here if the decision below is not reversed.

American Association of University Women (AAUW)

In 1881, the American Association of University Women (AAUW) was founded by like-minded women who had defied society's conventions by earning 27 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, chief among them financial gender equality. In adherence with its member-adopted Public Policy Program, AAUW is a staunch advocate for pay equity and offers programming designed to increase financial security for women. AAUW promotes research and advocacy initiatives that highlight the burdensome impact that financial insecurity, due to debt, the wage gap and other societal factors, can have over women's lifetimes.

Atlanta Women for Equality

Atlanta Women for Equality is a nonprofit organization dedicated to providing free legal advocacy to women and girls facing sex discrimination in the workplace or school, expanding economic and educational opportunities for women and girls, and helping our community build employment and educational environments according to true standards of equal treatment. Our central goal is to use the law to

overcome the oppressive power differentials and economic disparities imposed by socially predetermined gender roles and persistent discrimination.

Black Women's Roundtable
The Black Women's Roundtable (BWR) is a nonpartisan intergenerational civic engagement network of the National Coalition on Black Civic Participation. BWR champions 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

California Women Lawyers
California Women Lawyers is a non-profit organization chartered in 1974. CWL is the only statewide bar association for women in California. CWL maintains a primary focus on advancing women in the legal profession, while also working to better the position of women in society and to eliminate all inequities based on sex. CWL has participated in a wide range of cases to secure the equal treatment of women.

California Women's Law Center
The California Women's Law Center ("CWLC") is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination against women, with a focus on advocating for the rights of low-income women. CWLC is dedicated to the fight to end practices contributing to the gender wage gap and women in poverty. Committed to ensuring women are paid equally so they can be afforded the most opportunities possible, CWLC as a part of Equal Pay Today worked to get California's 2015 Fair Pay Act passed, one of the toughest equal pay laws in the country.

Center for Reproductive Rights
The Center for Reproductive Rights is a global advocacy organization that uses the law to advance reproductive freedom, an essential predicate of gender equality and full participation in social and economic life. In the United States, the Center's work focuses on protecting and expanding the constitutional, statutory, and human rights that guarantee reproductive autonomy, which includes the right to make decisions about family life free from discrimination in the workplace or elsewhere. Since its founding in 1992, the Center has been actively involved in nearly all

major litigation in the U.S. concerning reproductive rights, in both state and federal courts. As a rights-based organization, the Center has a vital interest in ensuring that individuals and groups endeavoring to exercise their rights have robust tools to achieve redress in the courts, including the ability to seek class and systemic relief.

Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)

Many Latinas are the primary earners making issues of job discrimination and equal pay ones that not only impact us, but also our families.

Equal Rights Advocates

Equal Rights Advocates (ERA) is a national non-profit civil rights organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in 1974, ERA has litigated numerous class actions and other high-impact cases on issues of gender discrimination and civil rights, including Dukes v. Wal-Mart Stores, Inc. Through litigation and other advocacy efforts, ERA has helped to expand workplace protections and conferred significant benefits on large groups of women and girls. ERA also assists hundreds of individuals each year facing unfair, substandard, and unequal conditions on the job and at school through our free national Advice and Counseling program. ERA has participated as amicus curiae in scores of cases involving the interpretation and application of legal rules and laws affecting workers' rights and access to justice.

Gender Justice

Gender Justice is a non-profit advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of its impact litigation program, Gender Justice represents individual citizens and provides legal advocacy as amicus curiae in cases involving the proper interpretation of the Civil Rights Act of 1964 and other federal- or state-level civil rights laws. Gender Justice has an interest in preserving employees' right to bring workplace discrimination claims.

Hadassah

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 in the United States, including strongly supporting women's economic equity and security.

If/When/How: Lawyering for Reproductive Justice

If/When/How: Lawyering for Reproductive Justice ("If/When/How") is a non-profit organization that trains, networks, and mobilizes law students and legal professionals to work within and beyond the legal system to champion reproductive justice. Reproductive justice will exist when all people have the ability to decide if, when, and how to create and sustain families with dignity, free from discrimination, coercion, or violence. Achieving reproductive justice requires a critical transformation of the legal system, from an institution that often perpetuates oppression to one that realizes justice.

Legal Momentum, The Women's Legal Defense and Education Fund

Legal Momentum, the Women's Legal Defense and Education Fund, is a leading national non-profit civil rights organization that for nearly 50 years has used the power of the law to define and defend the rights of girls and women. Legal Momentum has worked for decades to ensure that all employees are treated fairly in the workplace, regardless of their gender or sexual orientation. 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 Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998), Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), and Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). Legal Momentum has also worked to secure the rights of women under state constitutions, including the right of lesbians to marry.

Legal Voice

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.

MANA, A National Latina Organization
Founded in 1974, MANA, A National Latina Organization® (MANA) is a national grassroots membership organization with chapters, individual members and affiliates across the country. MANA represents the interests of Latina women, youth and families on issues that impact our communities. MANA contributes the leading Latina voice on many of the major issues in the public sphere, particularly in the areas of education, health and well-being, financial literacy, equal and civil rights, and immigration reform. MANA has been active for decades in the struggle for pay and workplace equity

National Advocacy Center of the Sisters of the Good Shepherd
Since their beginning in France in the 19th century, the Sisters of the Good Shepherd have worked to protect vulnerable women and children.

National Asian Pacific American Women's Forum (NAPAWF)
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.

National Council of Jewish Women
The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life

for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Employment laws, policies, and practices that provide equal pay and benefits for work of comparable worth and equal opportunities for advancement." Consistent with our Principles and Resolutions, NCJW joins this brief.

National Employment Law Project, Inc.
The National Employment Law Project ("NELP") is a nonprofit organization based in New York City with more than 45 years of experience advocating for the employment and labor rights of low wage and unemployed workers. NELP seeks to ensure that all employees receive the full protection of employment and labor laws, and that employers are not rewarded for skirting those basic rights. NELP's program priorities include workers' access to full remedies, including access to courts, unimpeded by private waivers imposed by their employers. NELP promotes policies at the federal, state and local level to protect workers' rights, and has litigated and participated as amicus in numerous cases in federal appellate and U.S. Supreme courts.

National Employment Lawyers Association
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.

National Institute for Reproductive Health (NIRH)
The National Institute for Reproductive Health ("NIRH") is a non-profit advocacy organization working across the country to increase access to reproductive health care by changing public policy, galvanizing public support, and normalizing women's decisions to have abortions and use contraception. In order to build the

vision of a society in which each person has the freedom to control their reproductive and sexual lives, NIRH recognizes how sex discrimination in pay and promotional opportunities shape and impact access to reproductive health care, and supports policies promoting workplace equality.

National Organization for Women Foundation

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, Education Amendment of 1972. Further, we support the right of persons to have their complaints about discriminatory pay or discriminatory treatment in the workplace properly adjudicated.

National Partnership for Women & Families

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 pay discrimination, and to ensure that all people are afforded protections against discrimination under federal law.

SisterSong: National Women of Color Reproductive Justice Collective

The issue of equal pay is about more than numbers for women of color who already face systemic discrimination at every turn. We cannot allow the denial of avenues of adjudication that help to close the gap for marginalized communities.

Southwest Women's Law Center

The Southwest Women's Law Center is a policy and advocacy Law Center that utilizes law, research and creative collaborations to create opportunities for women and girls in New Mexico to fulfill their personal and economic potential. Our mission is: (1) to eliminate gender bias; and (2) to utilize the provisions of Title IX to protect women and girls against sex based violence in schools and on college campuses, and to protect the rights of LGTBQ individuals. We collaborate with community members, organizations, attorneys and public officials to ensure that the interests of all individuals are protected.

The National Crittenton Foundation

The National Crittenton Foundation is proud to join The National Women's Law Center and the law firm of Katz, Marshall & Banks on this women's community amicus brief to the U.S. Court of Appeals for the Second Circuit in Jewelers. This case is a class action challenge to pervasive sex discrimination in pay and promotion opportunities under Title VII and the Equal Pay Act. Because the plaintiffs had all signed enforceable arbitration agreements, their case was referred to arbitration when it was first filed ten years ago. The plaintiffs have been thwarted in their effort to get a remedy by the district court's latest ruling, which has now held that the arbitrator exceeded her powers in certifying a nation-wide class of 70,000 women who are current or former employees of Sterling. National Crittenton catalyzes social and systems change for girls, young women and gender non-conforming young people impacted by chronic adversity, violence, discrimination and injustice. We serve as the umbrella for the 26 members of the Crittenton family of agencies providing direct services in 31 states and the District of Columbia. Together we work to advance services, systems, and policies that address the unique needs of girls and young women at the national level and in local communities across the country. As part of our mission, National Crittenton and its family of agencies stand firmly opposed to any laws, regulations, policies or actions that discriminate on the basis of gender, racial, or sexual orientation. In working with thousands of girls and young women, we have witnessed the tragic impact of thousands of instances of employment, education, and other discrimination that disadvantage their opportunities and devalue potential. As with all court decisions, it is crucial to fight for the right to adjudicate systemic or class claims in arbitration. The Jock class has successfully fought repeated challenges to its right to arbitrate and now, after ten years, close to 70,000 women may be denied

the right to benefit from the class relief. The National Crittenton Foundation's work is inclusive of all girls and young women and gender nonconforming young people. Our focus on root causes and cross-system approaches supports the attainment of our vision in which, girls, young women, and gender nonconforming youth can define themselves on their own terms and supported without fear of discrimination, violence or injustice.

The Women's Law Center of Maryland

The Women's Law Center of Maryland, Inc. is a nonprofit membership organization established in 1971 with a mission of improving and protecting the legal rights of women, especially regarding gender discrimination in the workplace and in family law issues. Through its direct services and advocacy, and in particular through the operation of a statewide Employment Law Hotline, the Women's Law Center seeks to protect women's legal rights and ensure equal access to resources and remedies under the law. The Women's Law Center is participating as an amicus in Jock v. Sterling Jewelers, because we believe class adjudication is an essential tool for challenging systemic discrimination against women.

Women Employed

Women Employed's mission 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 class adjudication is an essential tool for challenging systemic discrimination against women.

Women Lawyers on Guard

Women Lawyers On Guard Inc. is a national non-partisan organization harnessing the power of lawyers and the law in coordination with other non-profit organizations to preserve, protect and defend the democratic values of equality, justice and opportunity for all.

Women’s Bar Association of the District of Columbia
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 equal pay and to be free from discrimination based on their sex. Gender discrimination in pay can affect women’s financial well-being, career and social advancement, political advancement, and equality in general.

Women's Law Project
The Women’s Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP’s mission is to create a more just and equitable society by advancing the rights and status of women throughout their lives. To meet these goals, the WLP engages in high impact litigation, policy advocacy, public education, and individual counseling. 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. Economic justice and equality for women is a high priority for WLP. To that end, WLP has advocated for equal pay and treatment for women in the workplace and supports reform to strengthen federal, state, and local anti-discrimination laws and opposes barriers that impede access to legal remedies for discrimination.

WV FREE
WV FREE is a reproductive justice organization that recognizes economic opportunity and equality as essential to women and families' well-being. We know that equal pay is essential for women to lead healthy lives and believe we must pursue legislative, administrative and judicial avenues to procure this fundamental cornerstone of equity.